United States Court of Appeals

for the Second Circuit



APPELLANT'S APPENDIX

77-1006

In The

United States Court of Appeals

For The Second Circuit

B
PLS

UNITED STATES OF AMERICA,

vs.

RAYMOND GRABER,

Defendant-Appellant.

APPELLANT'S APPENDIX

Volume II, 259a - End

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(Tr. p. 395)

EXCERPTS OF TESTIMONY OF MR. KRANICK (Tr. pp. 395-407)
(pp. 259a-264a)

Q Before being employed by Nyack Hospital, whom did you work for?

A Department of Conservation and Waterways for the Town of Hempstead.

* * *

(Tr. p. 396)

Q During the time that you worked for the Department of Conservation and Waterways, did you make contributions to the To[illegible] of Hempstead Republican Finance Committee?

A Yes, I did.

Q Each of those years that you worked there?

A Each year except '75.

Q I see. When you did not give at all?

A Right.

* * *

397

(Tr. pp. 397 - 399)

Q Well, let me backtrack for one moment. How did it come about that you prepared a check for $81.67 to the Town of Hempstead Republican Finance Committee?

A When I was told about the one percent, I was very upset. And I wrote a check for exactly one percent including the change.

Q Does that mean you made approximately $8,176?

A Exactly.

Q What did you do with that check? That is, the check for $81.67?

A I voided it and I ripped it up.

Q Before you voided it, what did you do?

A I wrote a new check. I wrote a check for $82 and voided the original check.

Q Maybe you don't understand my --

A I guess I don't.

Q After you prepared a check for $81.67 payable to the Town of Hempstead Republican Finance Committee, did you give that check at any time to anyone?

A Yes. I put it in a sealed envelope and I gave it to Mr. Graber.

(Continued next page.)

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BY MR. CADEN:

Q And do you recall about what time you did that?

A I think it was the beginning of September.

Q 1972?

A 1972.

Q And did there come a time that you saw Mr. Graber with regard to that same check, the $81.67 check, but later on?

A Yes, he returned that check to me.

Q About when did he return the check to you?

A I'm not sure, but I would say somewhere around two weeks later.

Q Where did he return the check to you?

A In the lab.

Q Now, do you recall what, if anything, Mr. Graber said when he returned the check to you in the amount of $81.67?

A He said I would have to write another check rounded off, the cents to the next dollar, that the Republican Finance Committee would not accept the check the way it was written.

Q And did he give you the check back?

A Yes, he did.

Q And what, if anything did you do when he gave you the check back?

A I took the check, voided it, wrote a new check for $82, put that in an envelope and gave it back to him.

* * *

(Tr. p. 400)

Q Did you resent paying the one percent of your salary in 1972 to the Town of Hempstead Republican Finance Committee?

MR. SUTTER: Objection.

THE COURT: Overruled.

A Yes, I did.

Q And therefore you didn't make that contribution voluntarily?

A No, I did not.

MR. SUTTER: Objection.

THE COURT: Sustained as to the form of the question.

MR. SUTTER: Thank you, sir.

BY MR. CADEN:

Q Did you make any contribution subsequent to 1970 to the Town of Hempstead Republican Finance Committee?

A Yes, I did, I made a contribution in 1973 and in 1974.

Q And did you make those contributions voluntarily?

A No.

Q Whom did you give those checks to in 1973 and 1974?

A In 1973 I put it in an envelope and gave it to Mr. Graber.

* * *

(Tr. p. 402)

Q If I recall, you were a Phi Beta Kappa out at Adelphi?

A Yes.

* * *

(Tr. p. 403)

Q Ma'am, when you first received your job with the Department of Conservation and Waterways, you were a fellow resident of Malverne: Right?

A That is correct.

Q And you had not met Mr. Graber at that time, had you?

A No.

Q And if my local history is correct, in and about that time Mr. Howard Levitt was Executive Leader of the Republican Party of Malverne?

A That is correct.

Q Did you communicate with him, and please answer yes or no, concerning this position?

A Yes.

Q Did Mr. Graber at any time while you were obtaining your position say to you that if you didn't make contributions you wouldn't get the job?

A No.

* * *

(Tr.p.404)

Q Did you ever discuss political contributions with Mr. Graber?

A No.

Q It is a fact that this unwritten rule about the one percent you learned of from your fellow employees: Right?

A That is correct.

Q And particularly from Mrs. Keene?

A Yes.

Q By the way, based on your background and your accomplishments in school, the position that you held was not one that you particularly enjoyed in the beginning: Correct?

A That is correct.

* * *

(Tr. p. 406)

Q Other than that conversation, did Mr. Graber ever come to you and ask you for a political contribution?

A No.

* * *

(Tr. p. 407)

Q Okay. When you didn't contribute in 1975, did Mr. Graber ever tell you that you were going to be fired because you didn't contribute?

A No.

Q Did he ever tell you that you had been denied any promotion because you didn't contribute?

A No.

Q And you were not fired from that position, were you?

A No.

Q You voluntarily resigned from that position for one more to your liking?

A That is correct.

265a

RULING ON RULE 29 MOTION AND SIDEBAR COLLOQUY (Tr. pp. 451-462)
(pp. 265a-277a)

(Tr. pp. 451 - 457)

I take it the motion is a motion to direct myself to render a verdict of acquittal at this time under Rule 29 to the extent applicable to a trial without jury, or as I prefer to put it, to a one-man jury.

Now, I think at this time I have not to consider whether the evidence presented by the Government proves its case beyond a reasonable doubt, but rather to treat the case at this point exactly as one would if the Government rested at the close of a jury trial. That is to determine whether the evidence at this stage of the case is such that one could reasonably arrive at the conclusion that guilt had been established beyond a reasonable doubt.

Therefore, the action that I take at this time must not be considered as having in it any element of making findings of facts rather than surveying the whole body of the evidence with a view to determining whether or not it is an adequate foundation for a finding of guilt beyond a reasonable doubt.

Now, I've indicated already that I think there is before us first a validly formed Grand Jury and a duly administered oath, and that there was an appropriate subject of inquiry tin that the evidence related to matters which could not with certainty because I think as Mr. Druker's testimony indicates the matter was still under consideration within the Department of Justice, a subject of inquiry which touched on violations of law under the two sections of the old Civil Rights Law Sections 241 and 242 of title 18.

Now, the section 241 is a rather strange statute. It's very old. It goes back -- I think it was started originally as the anti-Klu Klux Klan statute from the days of the Klansmen and all that. But in more recent years attention has been concentrated on the meaning of the very first paragraph of Section 241 as it now appears in Title 18 which contains the words: "If two or more persons conspire to oppress, threaten, or intimidate any citizen in the free exercise of enjoyment of any right or privilege secured to him by the Constitution or laws of the United States, he is committing a crime." They have committed a crime.

Now, certainly interfering with the electoral

process in some form could manifestly be a deprivation of a cherished civil right.

(Continued next page.)

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THE COURT: Similarly, Section 242 provides that whoever under color of any custom willfully subjects any inhabitant of the state to deprivation of any right, privilege or immunity secured or protected by the constitution of laws is guilty of the crime.

And, again, if we are talking about people who have been persuaded to the view that their tenure in public job holding can in any way be influenced by their contributions to a political party, we are within the area of enunciation of Section 242.

Now, Section 1951, which was another of the cited areas of inquiry, may not have been germane to this particular area of inquiry that was pursued with Mr. Graber. Because that is the extortion statute and would not, I think, have worked in this particular context. At least, I do not see the connection. Though, it is not at all difficult to see that in a wider inquiry into corruption in state government you could readily run afoul of crimes visualized by Section 1951. So I think we not only have before us a validly organized Grand Jury, but one that was dealing with a subject matter of inquiry which was proper to it as a federal grand jury.

Now, having this view of the matter, the

materiality of the inquiries being directed to Mr. Graber, I conclude as a matter of law were material inquiries; answers to which it was important should the truthful answers and answers that would enable the Grand Jury to determine the facts. So that I think we come down in the end to the two questions: Whether or not the defendant was given a full and fair opportunity to answer the questions put to him; and second, whether or not there is evidence that his answers as given were untruthful in the sense of Section 1623 which requires that the defendant be shown in effect to have made directly false statements.

Now, I think that it is for the reasons that I have explained earlier that it is very easy to say that the witness was not permitted to complete particular answers. But I do not think it is possible to say that his answers were incomplete as responsive answers to the questions asked.

In other words, while he may have wished to extend his remarks, the answers that he did give were contextually complete answers to the questionsasked and more. The fact that he wished to and to them more would seem to me not to remove from him the responsibility to have answered truthfully in those parts of his answers which were directly responsive to

3 the question asked.

Now, the -- he really was asked two questions. First, did you have a part in soliciting. And his answer was, in substance, I had a total passive role as a transmitter of contributions. I was not a solicitor.

Now, oddly enough, although I think in a context which can't fairly be interpreted as a belated answer to the first question, he did at one point use exactly the words, "I have never solicited them."

But I think it is fairly plain that when he said that, he was talking about people outside the main office and way saying, or meant that he never personally approached them and asked them for a contribution.

However, so far as he did answer it, I think the Government could fairly argue that he did answer it falsely. Because he did solicit section heads, and through them their people, and followed up on the coming in of contributions. Such, I think would be the Government's argument.

Now, the second questionthat he was asked was, did he give out these cards in the manner -- well, did he do this. That is, a number of employees have

testified that you would come around and give thema 3 by 5 or a similar card on which it would have their name, their salary and the handwritten notation somewhere on the card which is a figure representing one percent of their salary.

Now, first of all, has that occurred.

He says, no, not in the manner and the way that you talk about it.

Then he says, all right, would you relate your recollection. And then he gives a statement which on this topic which, in substance, is that he did not take the initiative in handing out salary date in order to get in contributions. But on the contrary, set up a system for supplying information to those who inquired about their salaries for the purpose of making their own calculations about the amount that they should contribute.

Now, that I think again the Government would say is at variance with what the witnesses have testified to in this Court. And I think that one could reasonably reach the conclusion from this evidence that the answer did not truthfully depict the facts set forth.

Now, do either of these answers -- and there are really two questions, two answers constituting what is

charged in Paragraph 5. That is, a false denial of solicitation and suggestion that employees give a portion of their annual salaries to the finance committee.

While I think that the case is not easy at this very point and on this very legal issue, I conclude that the evidence is sufficient so that a tryer of the fact could reasonably draw the conclusion that guilt of the charge of perjury had been established beyond a reasonable doubt. Now, I say again that it is not a finding of fact, but simply a passing on the sufficiency of the evidence to form the foundation for a determination as to reasonable doubt by a jury. So that neither conclusion drawn by a jury of one or twelve could be regarded as unreasonable.

* * *

(Tr. pp. 457 - 462a)

MR. SUTTER: Judge, may we have a sidebar.

THE COURT: Yes.

MR. SUTTER: If your Honor please, as you recall earlier in this trial, Mr. Graber was critical

of my conduct and then later withdrew those criticisms.

On Friday, we were in front of Judge Samenga, S-a-m-e-n-g-a, in the County Court on Mr. Graber's state case, at which time he said we have established an attorney-client relationship. And he doesn't want anybody else from my firm or any other attorney to try it.

Now that his motions have been denied, as I toldhim over the weekend that they would be -- that was a matter of a little bit of flamboyance on my part, Judge -- I don't want to be in a position, your Honor, where he is going to claim that we did not spend enough time in preparing him. I can assure the Court that I have spent with Mr. Graber since our last recess in excess of fifteen hours for about twenty minutes of direct testimony. He now has his own ideas with respect to what the defense should be. They don't concur with mine. But I do have an obligation, and I would accordingly respectfully request that we recess until tomorrow morning at 10 a.m. in order that I can go over all of these witnesses with him whom I -- I don't think they have any relevance in this case. And I am candid to say that. So that there can be no criticism of anybody's conduct with respect to this case in the event that there should be a conviction.

He's got some nasty things to say about Mr. Druker. And he denies that the transcript is accurate and things of that nature, of which there is no question about, your Honor. And all that I am asking is that since we are approaching the noon hour at this point, I respectfully request to have the afternoon -- I'm going to work with him again tonight. I don't mind working.

THE COURT: What do you say, Mr. Caden?

MR. CADEN: Well, I would oppose, of course, that continuance on those grounds. With all due respect to Mr. Sutter -- and this is not meant to be insulting, but his client is a strong-willed man. And while his approach to the case either in strategy or in any other way may be different from Mr. Sutter, I think that the defendant is prepared to testify and he wants to have his say. I think --

MR. SUTTER: Judge, he is not --

MR. CADEN: I think he should --

MR. SUTTER: He will testify.

MR. CADEN: Let me just finish.

MR. SUTTER: Excuse me. I am sorry.

MR. CADEN: We had all day Thursday off and Friday off. I am sure Mr. Sutter, as he indicated, prepared his client. And the case has been somewhat

slow in even starting. And we have had almost six months to prepare the case. The Grand Jury minutes have been available for a like period of time. And I don't think that we should wait any longer. I think that the defendant, if he elects to testify, should testify now. And if he wishes to call any other witnesses, we can take that matter up whenever he concludes his testimony today.

MR. SUTTER: My problem is I don't know if I am going to call any others. These are things we have to discuss. Last night we reached an agreement concerning other witnesses. And now he has just revoked that agreement at the recess and wants other things done.

Judge, I am asking you this, and I would point out for the record, if I might, that in the waiving of a jury we have saved the entire voir dire. We have saved the probability of calling any character witnesses. I am sure they are as impressive to a one man jury -- as your Honor chooses to call this a non jury trial. I am asking you that we don't have any defects in this case wherein he is going to claim, or be it in my opinion that he is incorrect, that he wasn't afforded an adequate opportunity.

Now, I don't see any grave problem. The

defendant's case will probably be concluded by noon on Wednesday, which I think was my original estimate, and was Mr. Caden's. I see he confirms that.

Now, I would ask for the sake of the record that we do recess at this point until tomorrow morning at 10 a.m.. And he will have to take the stand.

THE COURT: We already set up a case for Wednesday.

MR. SUTTER: Judge, we may -- I will make a deal with you. If we have to work right through late, I will do it.

MR. CADEN: I might say it was my understanding that I -- I had spoken to Mr. Sutter and concluded that we would be through by Wednesday, but I was under the impression that we would have testimony on Monday and Tuesday.

MR. SUTTER: We have spent the entire morning on motions. And as was completely obvious the Court reviewed all the testimony as well as the Grand Jury minutes of Mr. Graber. I am just asking that in this case we do not have any question raised. And I think that a half day's adjournment would obviate that situation. And I assure the Court I am going to have him in my office at 2 o'clock this afternoon and I am going to be working with him at home tonight. We will

go out to dinner and them come back to the office at 8 o'clock. I will work with him until 1 or 2 in the morning. The work doesn't bother me at all. It is just that I don't want any criticism leveled with respect to any possible conviction.

THE COURT: I think the only reason for doing it is that the last time such a request was granted it did result in some forward movement in the case.

Now, I think we do have a man who has manifest -- and so Mr. Druker and Mr. Sutter found -- he is difficult to deal with.

I don't know what it will do to my calendar, but let's go over until 10 'o'clocktomorrow. But you must tell him that that is the end of the line.

MR. SUTTER: Judge, I am a believer in finality. I happen to be a trial attorney. And I understand these situations. But this is a very difficult man. As a matter of fact, he is the only one besides myself who I can't figure out.

THE COURT: All right, let's go over to 10 o'clock tomorrow. But we will simply have to finish tomorrow. One day.

MR. SUTTER: We will work right through if necessary, your Honor.

THE COURT: All right.

(End of sidebar.)

* * *

EXCERPTS OF TESTIMONY OF MR. GRABER (Tr. pp. 473-575)
(pp. 278a-374a) 473

(Tr. pp. 473 - 494)

Q Now, I'd like you to tell me, if you would, what your mental attitude was as you started to give answers to the questions before what is alleged to be a Grand Jury?

A I was in a bad state of mind, not due to anything due to conscience, but to certain events that occurred back to my department in the prior months.

Q Tell us what those events were, sir?

A Two things occurred, or perhaps three. To break it down into areas, first of all, Commissioner Udell called me in. I believe it was in January of 1975. He was shaky and quasi-hysterical. He had a computer printout. Very frankly, it's one that commissioners receive along with a letter in about August or September of each year relating to the collection of campaign contributions from employees.

Q Is that similar to the sheet that you saw in this courtroom, in this trial?

A I didn't see the sheet.

(Continuted on next page.)

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BY MR. SUTTER:

Q Is that the green and white one?

A There are many. I always have a computer run on my desk. They come in several forms.

Shall I go on, sir?

Q Yes.

A I have not fully answered your question.

So, in his hysteria he said -- and I got the impression he had been to some type ---

MR. CADEN: I object to the defendant's impression but I don't object to the conversation.

THE COURT: Yes. If there is something that gave you that impression, describe what it was?

A He mentioned that he had been to a meeting. In fact, I logged it in. I have it here (indicating).

Q When you say "I logged it in," did you maintain a diary of some sort?

A No. My wife -- I wish now I had taken my wife's advice many years ago and logged everything, but I suspected something and I put a little notation on the computer run and followed the instructions he gave me.

He said --

Q Which was what? What did he say?

A He said: "Put this in the budget file." Sticking

to that document, I have the exact date here (indicating).

Q If you look at that, would that refresh your recollection as to when it was?

A Yes sir.

(Pause.)

MR. SUTTER: Do you want it marked for identification?

MR. CADEN: Whatever.

MR. SUTTER: For the sake of the record, if we can mark it for identification it would be appreciative, your Honor.

May I approach the witness, your Honor?

THE COURT: Yes sir.

MR. SUTTER: Thank you.

THE CLERK: Marked for identification as Defendant's Exhibit F.

(So marked.)

MR. CADEN: May I see it, Mr. Sutter, please?

MR. SUTTER: Sure.

(Pause.)

A Now --

MR. SUTTER: Hold it. There is no question.

THE WITNESS: Wait a minute.

MR. SUTTER: I'm sorry, Judge.

THE WITNESS: Before I forget --

MR. CADEN: I object, your Honor.

THE WITNESS: There is more to it than that.

MR. CADEN: Until there is a question asked -- I am almost finished.

THE COURT: The witness is answering an earlier question, I take it.

I think, Mr. Graber --

THE WITNESS: I'm sorry?

THE COURT: You would be well advised to follow the guidance of Mr. Sutter who is a lawyer of considerable skill and experience.

THE WITNESS: Okay.

THE COURT: His art in part is protecting clients from themselves.

MR. SUTTER: 40 percent of the business, your Honor.

Q If I want more information, I will ask you a question, okay?

A Okay.

MR. CADEN: Thank you.

Q I show you -- may I approach the witness, your Honor?

THE COURT: Yes.

Q I show you Defendant's Exhibit F for identification and ask you to look at it?

Look at the whole of it, sir.

A Yes.

(Pause.)

A I have looked at the whole of it.

Q Does that refresh your recollection as to when you had the conversation with Commissioner Udell concerning the computer print-out sheet?

A It was the afternoon after I returned from the Grand Jury. He had appeared about a week or so before me.

Q I want you to relate back now to when he first told you about the computer sheets.

A This one or all?

Q All.

A 1967, and each ensuing year thereafter.

Q That disturbed you?

A It did.

Q What else played upon your mind, if anything, at the time you testified before the Grand Jury?

A To other events, the first one Mr. Udell called me in, my best recollection is it was at the time of the height of the FBI investigation. And most specifically, my mind seems to feel it was just before or just after he was pursued

by the FBI.

Q How about Mrs. Esperanza?

A Wait a minute. I haven't answered the first question, sir. What upset me before I went to the Grand Jury I think is what you are asking.

Q Right.

A That day he said --

Q Who said?

A Commissioner Udell --

Q Yes?

A Words similar or exactly to this effect: "You know, and you can understand this, I am not like these other fellows," meaning the other commissioners, and perhaps town officials, "I am not a politician. I can't admit you understand," and he named Nat Bennett.

Q Who is Nat Bennett?

A He is the Town Clerk.

Q Town of Hempstead?

A Of the Town of Hempstead. Commissioner Udell alleged that either on Nat Bennett's FBI interview, if he had one, or Grand Jury appearance, if he had one -- I wouldn't know if he had either, I can only relate to what Mr. Udell told me.

Q You feel better now? All I want to know is what

played on your mind, if anything, before you went to the Grand Jury.

A I still don't think I told -- yes, I said part of it. And so he said: "You understand why I can't be involved, I can't admit that I had assigned you to this each year and you are on your own."

I said: "Mother of God." I realized what was starting to happen to me and the position that I was in.

I said: "But, sir, you remember --" He said: "Don't remind me. I don't want to remember. Stop. Let's cut off the conversation."

Essentially, that was it. Essentially.

Q Is it fair to state you felt you were -- are you all right?

A I am okay.

Q Is it fair to state you felt you were being let down?

A Yes, and more than let down.

Q Did that prey on your mind when you testified in front of the Grand Jury?

A It preyed on my mind from that instant on.

Q Other than the Udell situation, was there anything else that preyed upon your mind before you testified in the Grand Jury?

A Yes, there was.

Q Tell us what it was?

A He was quite hysterical about two employees, quite hysterical. The first one was Ulanda Speranza.

Q Who was she?

A His personal secretary.

Q One of the witnesses in this case, right?

A Yes.

Q Okay.

A And he said: "We've got to get to her."

I further heard something relating to Gino Aiello to communicate with her.

Q Let me ask you at this time was it pretty general knowledge -- hold it, I withdraw the question.

A There is another employee.

Q I have notes and I am going to try to keep you on the railroad track.

Did you know whether or not the FBI and the United States Attorney's Office at this time was conducting an extensive investigation into the affairs of the Town of Hempstead and particularly the Republican Party?

A Yes, this is 1975 we are talking about.

(Continued next page.)

ss/ss

2aml

BY MR. SUTTER:

Q That's where you get these 1500 invoice and stuff?

A That's correct.

Q Now, tell us about Mrs. Esperanza and what caused your mental attitude at the time you testified before the Grand Jury?

A I'm not allowed to confer with counsel, my -- because there's two things.

Q Give me both of them then?

A Okay. Now I have lost -- I have lost the train of thought. Read the question and then I'll answer it.

Q I'll turn the switch and we'll put you back on the track.

A Please.

Q We're now dealing with what your mental attitude was at the time you testified in front of the Grand Jury, whether you were upset and what caused you to be upset. We went through the Udell situation.

A Right.

Q Now, is there anything with respect to Mrs. Esperanza?

A Yes.

Q Tell me what that was.

A The first thing in this I had heard -- I can't pinpoint the when. I got the shock of my life. One of her employees, Russ Redfield, specifically --

Q Who is he?

A He is now retired. He still resides in Freeport. He was a supervisor of Marine Maintenance.

Q What about Mr. Redfield and Mrs. Esperanza?

A Russ said --

MR. CADEN: I would just like to object for one reason, to the testimony as to what other witnesses or other persons may have said, especially if this testimony is arguably being offered for the truth of what Mr. Redfield said.

MR. SUTTER: Just for the fact.

MR. CADEN: Let me finish.

Presumably he's not being called as a witness. It seems to me that insofar as these conversations are concerned, being offered for the truth, I would object to them.

THE COURT: I do not take them as offered for the truth of the matter asserted. As I understand this whole line of questioning, it's simply to have Mr. Graber reproduce here the contents of his mind and his subsequent frame of mind at the time when he

was interviewed before the Grand Jury by Mr. Druker.

MR. SUTTER: That is exactly correct.

THE COURT: As far as I'm concerned, whether it was true or faulse is quite beside the point and not involved at all. This is simply a kind of prustisian (ph) mind content revelation.

MR. SUTTER: That is correct, not offered for the truthfulness of any statement, merely for the fact Mr. Graber recalls it was said.

A In any event, the expression was "twisted her arm." I couldn't believe that knowing the facts and the thoughts that ran through my mind and anything in terms of her wedding. I was one of the few that was invited, a Christmas card,"God bless you Mr. and Mrs. Graber."

Q That didn't shake you up before the Grand Jury, did it?

A Yes -- well, the allegations shook me up and whatever this mystery was shook me up. In fact, I went one step further. Knowing or alleging, I think would be the word that Mr. Caden would prefer, I say --

Q Don't second guess --

MR. CADEN: I would like to --

THE COURT: Keep your mind on the evidence. Disregard everything else.

MR. SUTTER: I apologize.

THE WITNESS: I apologize, your Honor.

Q Don't second guess Mr. Caden.

A I was afraid he was going to get up and object.

MR. SUTTER: If he does, don't answer anything. The Court will rule on it and you answer it or don't.

(Continued next page.)

Q We went over this for hours, right?

A So, I asked Mr. Aiello, because me twisting Mrs. Speranza's arm or anybody's arm is inconceivable if you know my philosophy of life. I mentioned this to him and I knew he was in communication and all he says it was "Nah."

Q Anything about Mr. Zuretsky?

A Yes.

Q Who is Mr. Zuretsky?

A John Zuretsky is a conservation biologist.

Q Is that all you want to know?

A What occurred with Mr. Zuretsky, I think I told you --

Q You may have told me, sir, but youhave to tell the Court.

A In this courtroom today about two names that Mr. Udell was hysterical about, the other being John Zuretsky.

Q All right.

A He used the expression "He could hang us all." I do not know what he meant by that expression. In any event, I knew that Commissioner Udell, in 1967, had had a conversation with me and told me a story about John Zuretsky that had occurred before I became employed.

Q Go ahead.

A I was going to say -- shall I continue?

Q Yes, please.

A I have to make one qualification in outlining the story, memory, of one detail. I feel that one evening, and it was an evening like four o'clock or thereafter, that Mr. Udell -- Commissioner Udell -- had John Zuretsky and I in the room together and he told me and had alleged that prior to my joining the organization a request for promotion had been put in for John Zuretsky and that it was denied, allegedly because he had not made contributions.

Q Did that shake you up?

A Yes, because Commissioner Udell had made a direction to me that evening to be what I have referred to in writing, along the way, and this was with the agreement of Mr. Zuretsky, to be Zuretsky's memory bank. John wanted to be reminded. He said "You've got to make contributions and I don't want to forget in future years."

Q When you went into the Grand Jury --

A Yes, Mr. Sutter?

Q Were you nervous?

A Of course I was nervous. In fact, most of my fellow employees were nervous when they went down. It's terrifying --

MR. CADEN: I object to the gratuitous remarks. It's obvious to all of us. I move they be stricken.

THE COURT: Motion granted.

MR. SUTTER: As to nervous, your Honor, or the rest?

THE COURT: The references to the conditions of others.

MR. SUTTER: Very good, sir. I consent to that.

A (Cont'g) Yes, I was very nervous.

Q How are you today?

A Nervous.

Q Did something else happen prior to your testifying here today?

A I became indicted; is that what you are referring to, or what?

Q Was there a memorandum concerning your duties with Conservation and Waterways issued by Commissioner Udell?

A I have a packet full of things that had occurred on the day of my indictment to destroy me, yes.

MR. SUTTER: May I respectfully request this be marked for identification?

THE CLERK: Marked for identification, Defendant's Exhibit G.

(So marked.)

MR. CADEN: I would like to have a side bar

about this document and perhaps foreclose an inquiry which I deem to be irrelevant based upon what Mr. Sutter was kind enough to show me.

(A sidebar conference was held as follows:)

MR. CADEN: I would like the Court to peruse what has been marked a defense exhibit. I have, I thought, been somewhat remiss in not making objections up to this point, but certainly with regard to a memorandum dated after the Grand Jury, the relevance along the lines of the proceeding as to what the defendant's state of mind may have been as to the time he testified at the Grand Jury, it seems that memorandum --

MR. SUTTER: I only want to use this to refresh his recollection as to his state of mind when he testifies today. I'm dealing with a bunch and a half of diamonds and you can admit that.

MR. CADEN: My feeling is that he's already expressed --

MR. SUTTER: I'll ask him directly.

MR. CADEN: I would like to note I think the inquiry on the document is irrelevant and I would like to have it noted for my objection.

THE COURT: The document is irrelevant.

MR. SUTTER: If your Honor please, I have no intention of offering it.

(In open court.)

MR. SUTTER: I should say tentatively offering it, Judge.

Q Mr. Graber --

A Yes, Mr. Sutter?

Q Shortly prior to this trial did Commissioner Udell take action with respect to your responsibilities and authorities in your department?

A He relieved me of all of them, not only via this document but several others.

Q Do you recall on or about when that occurred?

A I went in the office, briefly --

Q Just --

A Yes.

Q Stick with me, okay?

Do you recall on or about when that occurred?

A The day the trial started, I think.

Q If I showed you a copy of the memorandum would it refresh your recollection?

A Yes.

MR. SUTTER: Might I approach the witness, your Honor?

THE COURT: Yes.

Q I show you Defendant's Exhibit G for identification only, and I ask you to look at it (handing to witness). Turn it over.

Does that refresh your recollection as to when you were relieved of all administrative and supervisory duties?

A September -- wait a minute -- September 7th, yes.

Q When you went to the Grand Jury to testify you told us you were upset, right?

A Yes, sir.

Q Let me ask you this. Have you been told -- I'll have to do it another way.

MR. SUTTER: Withdrawn, with the Court's permission.

Q (Cont'g) When you went in there did you know the difference between a target and a witness? Just answer me yes or no?

A Yes.

Q When you went into the Grand Jury what was the understanding that your status was?

A Witness.

Q Insofar as you knew?

A Witness.

Q Did something occur in the Grand Jury that made

you further upset?

A Yes.

Q What was that?

A I don't have a copy of the minutes in front of me, but I do have enough recollection on that point.

Q Hold it. Mr. Caden has been kind enough to furnish me with Government's Exhibit No. 1.

MR. SUTTER: If I may approach the witness, your Honor?

THE COURT: Yes.

Q Government's Exhibit 1 (handing to witness) is a transcript of your Grand Jury testimony. Something happened in there that made you further upset?

A (No response.)

Q Did something happen?

A Yes.

Q What happened?

A Suddenly I found out I was a target.

Q What did you understand that to be?

A (No response.)

Q Mr. Graber, are you okay?

A I'm okay. Grave and serious implications and spinning through my mind was all this intrigue with Commissioner Udell prior to my appearance and now I can see why I

was a target.

Q W hat did you understand a target to be?

A Well, I'm going to express it my way. Begging the party who was one of the organizers of what was alleged to be a violation of the Civil Rights statute or the Extortion statutes. In other words, an originator, a strategist, a top guy. I don't know if that's what -- if that's -- you know, if I've answered the question intelligently.

Q Were you told by the Assistant United States Attorney at that time that you may fit into the category as a defendant rather than as a witness?

A Yes.

Q When for the first time did you learn that you might be a defendant?

A There and then.

Q Now, what occurred to you?

A I couldn't believe it. My thoughts kept running back to all of these incidents that had occurred that I had related today regarding things that occurred between me and Commissioner Udell.

Q Mr. Graber, I'm kind of what they would call a street person, all right?

A Yes.

Q Do you know the expression "fall apart"?

A Yes.

Q Or "get unglued"?

A I sure got unglued up there (indicating).

Q Referring to your head?

A Yes, I didn't cry or anything.

Q You can get unglued without crying, can't you?

A Yes.

MR. CADEN: I object to the colloquy.

THE COURT: Just continue.

MR. SUTTER: Thank you, sir.

THE COURT: That will be better.

Q By the way, Mr. Graber, when you were with Mosler, and what was it, Cameras for Industry?

A Yes.

Q Did you have a physical problem at that time?

A 1957, the Mosler Safe Company.

Q What happened?

A Some two --

Q No, what happened to you physically, sir?

A I had a nervous breakdown.

Q Were you hospitalized for it, sir?

A No, sir.

Q Were you treated by a physician?

A Yes.

Q Sedated?

A I do not recall.

* * *

(Tr. p. 495)

MR. SUTTER: Judge, could we take a five-minute recess at this point?

THE COURT: Very well.

MR. SUTTER: I'm going to go into another area.

MR. CADEN: Could I ask or through the Court ask Mr. Sutter how long he would be? I would be more than happy to give Mr. Graber time to relax.

THE WITNESS: This is just like at the Grand Jury.

MR. SUTTER: Please.

THE COURT: We'll have a recess.

* * *

hs/ss 1

3aml 2

(Tr. pp. 496 - 518)

3

Q Mr. Graber, as you entered the Grand Jury room, did you see other people in the hallway outside the Grand Jury room?

A I was very surprised at what I saw.

Q Just tell me, did you see other people?

A Many many people all screaming "I want to be next." It was pandemonium.

Q You have the impression, sir, and just answer me yes or no, whether or not you were being rushed in the Grand Jury?

A It's right on the record that I was being rushed.

Q Now, you have Government's Exhibit 1?

A Yes, I do.

Q Would you go to that portion of the minutes which indicate that, sir, in your opinion?

A This is Assistant United States Attorney --

Q Give us a page, please?

A Page 7 line --

Q You will notice here that you are not being rushed by Judge Dooling or by Mr. Caden or myself. Take your time and get to the page number and tell us what it is.

A Page 7 starting line 21.

Q Okay.

A "Question: As you can see I am obliging you at your request."

I do not know what request he is referring to here.

"As you can see there is a hallway full of people out there that we are trying to get out of here by lunchtime."

Q Okay.

A Do you want me to read any more?

Q Do you recall what time you testified?

A I think it's right on here, sir. It was late morning. It says "11:15 a.m."

Q And do you recall what time your testimony was concluded?

A I know having seen this it would indicate I was in twenty minutes approximately.

MR. SUTTER: If your Honor pleases, the exhibit does indicate that his testimony was concluded at 11:35. I am referring to page 17, Mr. Caden.

Q Now, were you give the opportunity to complete all of your answers?

A No, I was constantly interrupted -- constantly.

Q Did you want to say something more about

solicitation?

A Yes.

Q Now, may I direct your attention to page 12 in Government's Exhibit 1.

Would you please read that to yourself, not aloud.

A Wait a minute, my mind wandered a bit. We are on page 12. What is it that you wish me to read?

Q Page 12.

THE COURT: To yourself.

MR. SUTTER: To yourself, not aloud.

(Pause.)

A Well --

Q I didn't ask you anything. I just asked you to read it. Have you read it?

A Yes, I have.

Q Okay.

Do you recall that incident?

A Yes, it seems because of this --

Q Just answer my question yes or no. Do you recall the incident?

A Yes.

Q What occurred at that point?

A Well, it occurred throughout from half the page

down any time I wanted to say something, I was interrupted.

Q Did that in fact occur?

A Yes.

Q Did you want to say something more about solicitation?

A Yes, and I believe a few other pertinent issues to be able to tell the whole truth.

Q What I am getting at, Mr. Graber, as a very simple question, were you anxious to tell the Grand Jury all the story in the manner in which you wanted to tell it?

A Yes, I had waived my constitutional right. I could have walked out of that room and not said anything. Yes, of course I did.

Q Were you afforded the opportunity to do so?

A I do not in good conscience believe I was with this hallway full of people and all the interruptions.

Q Mr. Graber, in the multi-hours that we have spent together, you understand I think pretty much how a lawyer functions, right?

MR. CADEN: I object to the colloquy.

MR. SUTTER: Judge, I ask it be taken subject to connection?

THE COURT: Very well.

A Wait a minute. You will have to repeat it. I

wandered again.

Q That is just what I am getting at. You understand that lawyers, be they prosecutors or defense attorneys, tend not to wander, right? They are precise?

A Yes.

Q And do you feel --

A You keep saying "keep your eye on the ball."

Q Right.

I want you to look again at Government's Exhibit 1. Do you recall in the beginning of your testimony you were questioned about $202 contribution?

A I do recall there is something in the testimony to that regard, yes.

MR. SUTTER: Judge, if I may lead with the permission of the United States Attorney for a moment, so we can save some time.

Q Look at page 6 in Government's Exhibit 1, at the very bottom --

THE COURT: Line 23?

MR. SUTTER: Yes, your Honor.

MR. CADEN: What page was that?

MR. SUTTER: Page 6, line 23.

Q (Continuing) -- just read it to yourself, not aloud, please.

(Pause.)

Q Do you recall being asked that question about your $202 contribution?

A Yes -- wait a minute. There is something --

Q Just answer my question.

A Yes, I was asked.

Q Right.

A I assume being asked as to how I arrived at the figure.

Q You told them that you made the $202 contribution?

A The contribution was $202.

Q Now, go to page 14. Go down to line, I guess, 19.

A You just want me to read lines 19 and 20, Mr. Sutter?

Q Yes.

(Pause.)

A Yes, I have read it.

Q Way back from page 7 to 14, you go back again, do you not, to your $202 contribution?

A That's what the testimony says.

Q Did you understand what you were being asked in that Grand Jury, sir?

MR. CADEN: With reference to what, sir?

MR. SUTTER: To anything.

A Generally speaking, yes.

Q Were you responsive?

MR. CADEN: I object, calls for this witness to make a conclusion.

THE COURT: You can ask him whether he meant to be responsive.

Q Did you mean to be responsive?

A I certainly did mean to be responsive. I said on one of those early pages, "I will testify -- I will fully testify." Whatever it says, yes.

Q Do you feel you were afforded the opportunity to fully testify and to know -- in fact -- should I go further as to what I did?

MR. CADEN: This has been asked and answered five times. The sixth time I do not see what is to be gained by it.

THE WITNESS: All right --

MR. SUTTER: Excuse me, the Court is going to rule.

THE WITNESS: I'm sorry.

THE COURT: I think the question has been answered already.

MR. SUTTER: Do not answer it any further, okay?

THE WITNESS: Yes.

Q When you were there with Mr. Druker, did he shout at you?

A It was a very accusatory, loud, rough "Jean Val Jean" I think would be the word -- the manner.

Q A what?

A I think I have the right fellow. The fellow in "Les Miserables."

Q I went to Brooklyn Law School and I do not understand what you are talking about. Describe his attitude?

MR. CADEN: I object to the colloquy.

Q Describe his attitude.

A Very accusatory, rough and just wouldn't let me think an answer.

Q Mr. Graber, do you recall the arguments that were made by Mr. Caden and myself before the Court?

A To be --

THE COURT: At this trial yesterday?

MR. SUTTER: Yes.

THE WITNESS: The arguments yesterday?

MR. SUTTER: Right.

THE WITNESS: May I say first, I couldn't comprehend some of it because it was legal terminology.

Q You recall we had an argument here?

A You did, yes.

Q Not a fight, a legal argument.

A No no.

Q Okay.

Now, would you please refer to page 13 of Government's Exhibit 1?

A I have page 13.

Q Go to line 15.

Don't read it aloud. It's on the mike.

A Yes.

Q Did you or did you not admit to the Grand Jury that you handed out personally some of those 3 by 5 cards with the employee's name and salary on it?

A Yes, I could say more but if you wish just "yes."

Q We will get into that in a minute, all right?

Now, go down to line --

MR. CADEN: This is an improper use of the Grand Jury testimony. This is only to in essence point out whether or not the defendant said certain things at the GRand Jury. I do not think this is being used in its proper function.

MR. SUTTER: I intend to connect it up.

THE COURT: It is being used for something else,

that is true.

MR. CADEN: I did not hear?

THE COURT: Except it's introductory to something else. Your objection would be well founded. I take it is intended to lead to something else?

MR. SUTTER: It's introductory to lines 20, 21 and 22.

(Continued next page.)

Q Would you please read lines 18 through 22 to yourself on page 13 of Government's Exhibit 1 in evidence.

A Through which line do I read it, Mr. Sutter?

Q Read down to line 23. They're all short lines anyway.

(Pause.)

A I have read them.

Q Do you recall that colloquy?

A Yes.

Q Let me ask you something. You were asked a question at line 18, right?

A That is correct.

Q And I think here you interrupted Mr. Druker, right?

A Yes, because I thought there was something important which -- to tell, yes. I interrupted him apparently from the way the transcript reads.

Q Now you said, "She went one step further," right?

A Yes.

Q What did Mr. Druker do?

A He interrupted me.

Q Was there anything more youwanted to tell that Grand Jury concerning the subject that you were being

questioned on?

A Yes.

Q Were you afforded the opportunity, sir?

A No.

Q And here generally we were dealing with whether or not you had suggested to any Town employee to contribute a portion of their salary; right?

A I believe that would be the whole gist of all the testimony.

Q Right. Now, sir, there came a time, did there not, Mr. Graber, when you left the Grand Jury room?

A Yes.

Q And where did yougo?

A I felt miserable, but I thought it --

Q Mr. Graber, where did you go?

A I went back to Point Lookout. I felt it was better than brooding about certain things.

Q Okay.

A Back to my job.

Q How did you get there?

A Limousine took me back home and then I presumably -- I don't recall it, but it would be natural, had lunch and dashed down to Point Lookout.

Q By the way, just so there is no improper

implication --

A I am not sure that I had lunch --

Q Would you please listen to me.

A Okay.

Q I don't mean to pin you down. We are friends?

A We assuredly are friends.

Q Who paid for the limousine?

A I did.

MR. SUTTER: I do not want anyone to think that the Town paid for the limousine.

MR. CADEN: I object to the colloquy.

THE COURT: Overruled.

MR. SUTTER: We do have the press here.

Q Did you do anything with respect to your Grand Jury testimony?

A Yes.

Q What was that?

A I realized two things -- two things that were going on in my mind.

One that Mr. Druker had rushed me -- had interrupted me. That through the cloud of shock I attempted to express things in my own way, that I never got it all on the record.

Now frankly, there was one other thought.

When he said, "You are dismissed," I was thinking "I didn't want to be rude," and in the second instance I was thinking of that limousine running up its meter standing outside and I was caught in a conflict, but as soon as I got to Point Lookout I made a call to Mr. Druker. He wasn't present. I told Mr. Goldman something --

Q Who is Mr. Goldman?

A I believe he is also an assistant United States attorney. I kept a note of that right on my subpoena. I wanted to keep his name in mind in case I had to show that I did make such a telephone call. And I told Mr. Goldman something to the effect that now having had the shock that I was a target and not a witness, I felt that my testimony wasn't complete, that I was rushed, and I begged him to have Mr. Druker call me back on the stand, and I recall saying to him, "Like I have read in the newspapers that targets can usually have time, even if it takes a day on the stand, I want everything on the record straight."

Q Did you receive a return call?

A No, I did not.

Q Were you ever requested or afforded the opportunity to return to the stand and complete your answers or explain any of them?

A Yes, some many weeks later under totally

different circumstances.

Q Fine, let's get into that.

A Stop there?

Q Okay. Am I correct -- withdrawn.

When if ever did you receive a return phone call from Mr. Druker?

A Never.

Q Or from Mr. Goldman?

A Never.

Q Did you then do something with respect to the situation of your Grand Jury testimony?

A Yes.

Q What was that, sir?

A I consulted with Jim Catterson.

Q That's the same Mr. Catterson that you referred to previously?

A Yes, I wanted to know if everything was all right. I got the impression that he had meetings with Mr. Druker Monday mornings.

Q By the way, I am still not on the scene?

A You are a name in the newspaper. You see, I read the newspapers thoroughly.

Q You had a conversation with Mr. Catterson?

A Yes.

Q As a result of that, what if anything did you do?

A He said -- I don't want to repeat the words because they are those words that men might say to be emphatic -- but that I had a problem down at the United States Attorney's office and I'd better get down there.

(Continued on next page.)

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mp/ss

BY MR. SUTTER:

Q What did you do?

A Well, I had two problems. I now have been told I have a problem about the United States Attorney's Office. I also have problems of that type of driving on the Brooklyn-Queens Expressway, and I also -- as I stated in my earlier testimony today -- knew of some coverup, I am going to use the word just like in Watergate, that was going on in my department.

So I decided before I went to Mr. Druker I would go to the FBI and ask for investigative help.

I asked to speak to the -- first I phoned and asked to speak to the chief. I did speak to the chief. I think he said he wouldn't handle it but he put a man on and all I asked is that it be an experienced FBI man who was a good investigator. I wanted the best help from the FBI.

Q Did you receive it?

A I got up to the FBI headquarters in Garden City, off the top of my head, on whatever day, sometime shortly after luncheon and after waiting in the outer lobby the chief came out, I believe, and he explained that he had been in communication with Mr. Druker and since I have already been interrogated by the Grand Jury the FBI could not help me but he was assigning Norman Murray was his name. I liked the guy

too, incidentally, who would take me right down to Mr. Druker.

Q Did he do so?

A Yes, he did, sir.

Q Did you have a conversation with Mr. Druker when you went in there?

A I had a discussion but it was a continuation of the approach in the Grand Jury, rather than just chatting, it was accusation, accusation, accusation.

Q All I asked was whether you had a discussion. That is a simple yes or no answer.

A I'm sorry. Yes, I had a discussion.

Q Did Mr. Druker give you certain advice?

A Yes.

Q What was it?

A "Come back with an attorney."

Q Did you thereafter retain counsel?

A I did, sir.

Q Who was that attorney?

A Incidentally, first of all I said that I was just a public employee and I never accumulated any wealth. He said "Then we will go down to the magistrate and he will assign you a free attorney."

The magistrate asked me my bank account and it's in the low four figures with a youngster in college and he

asked me if I owned a home. He said: "I think for the purposes and the length of time involved it would only be about 100 or $150. I think you can afford that."

The 100 or $150 I could afford. In the brief time I had counsel, it was much more than that.

Q My question was, did you thereafter retain counsel?

A Yes, I did, sir.

Q Who was that attorney?

A Mr. Frank -- Francis Xavier Kilgannon (ph).

Q In Mineola-Garden City?

A Right on the borderline.

Q Did Mr. Kilgannon meet with Mr. Druker?

A Mr. Kilgannon-- I thought the three of us were going down to talk to Mr. Druker directly. However, I was kept out of the room in the hall. Mr. Kilgannon would run in and out asking would I know about that or this, or do I have anything to help Mr. Druker on that, et cetera, et cetera. Anything I thought I might give to be cooperative I would tell Mr. Kilgannon and whatever happened in the room, apparently none of these things seemed to be of help to the Government. I tried to cooperate. I thought I went down there for another purpose.

Q Did you return to the Grand Jury room at any

subsequent time?

A No. There were --

Q You answered the question.

A Okay.

Q Why not?

A If my memory is correct, it was now late in the afternoon or the first meeting had to be terminated and Mr. Kilgannon and I returned home.

Subsequently, I believe I received a telephone call from Mr. Kilgannon that Mr. Druker would again see us in Brooklyn and we would go over the Grand Jury minutes.

Now, when we got down there we had to wait a while. To the best of my recollection -- in other words, your Honor, I am qualifying this a bit -- to the best of my recollection, Mr. Druker initially when he saw the two of us said "Okay, I want him right in the Grand Jury room."

I turned to Mr. Kilgannon. I was confused. He told me we were down there to read the minutes. As I recall it, Francis Kilgannon said to Mr. Druker "Where are the minutes? Oh, they are not here," and there was a time we waited and waited because Mr. Druker I think had a Grand Jury and ultimately the minutes came down. They were handed to Mr. Kilgannon.

Mr. Kilgannon requested a quiet place where we

could sit down and study them. Mr. Druker apologized and he said there wasn't a ingle room available, "Why don't you read them out in the hall." So we started to. We were reading the minutes under the most difficult situation. But Mr. Kilgannon picked up a number of things, as a counselor, and didn't confide in me as to what he did. Interruptions, he commented on those, for example. As a matter of fact, he pointed something like that out to Mr. Druker.

We hadn't even read five pages of the minutes and Mr. Druker rushes over and says "Let's bring him into the Grand Jury room."

Ultimately, we did read the entire transcript.

Mr. Druker came out and on the advice of Mr. Kilgannon, he said to Mr. Druker: "Mr. Druker, I don't see perjury in this transcript and therefore I am advising my client not to go back on the stand."

If you hire a counselor, I think you have to follow his advice, be it right or wrong.

Q Did you follow the advice given by Mr. Kilgannon?

A I had enough confidence in Mr. Kilgannon that if this was all the testimony I need give the Government and keep out of trouble, this is where I should rest.

Since he told me not to testify, I did not.

Q You did have an opportunity to write a letter to

Mr. Druker?

A I did write a letter to Mr. Druker. First of all, when I got Mr. Kilgannon's bill I couldn't go any further with an attorney. All right.

Q Did you write to Mr. Druker?

A Yes.

Q Concerning the Grand Jury testimony?

A Yes.

Q Concerning the investigation?

A Yes. There was a reason I think pertinent --

Q Tell us why you did that?

A Okay. Mr. Druker had ltold Mr. Kilgannon that there was no hurry about things. He planned to come out to Nassau County in a month or two and he would communicate with us and have further chats.

Apparently there were certain areas that he, that Mr. Druker, was interested in.

Now, I told Mr. Kilgannon that I can't afford to pay any more money. But when Mr. Druker calls and if Mr. Druker calls, since Mr. Druker promised to call when he came out to Nassau, you will still advise me even though I am not paying any more money. I believe he said yes. I see Mr. Kilgannon at Mass week after week and I ask him "Have you heard from Mr. Druker," and he says, "No."

Q Do you recall when you wrote to Mr. Druker?

A Off the top of my head, I would say a month before Election Day, more or less.

What is the date?

MR. SUTTER: I respectfully request this exhibit be marked for identification.

THE CLERK: Defendant's Exhibit H for identification.

(So marked.)

MR. SUTTER: May I approach the witness, your Honor?

THE COURT: Yes.

Q I show you Defendant's Exhibit H for identification and I ask you to look at the first page of that exhibit?

A Yes.

Q The first page.

A May I say one thing in fairness?

Q No. Please look at the first page.

A These are my notes of the letter.

Q I asked you to look at the first page.

A The final letter had a few different words.

Q The first page. You are on the second page now.

A To make sure that it was received, I sent it

certified mail.

Q Do you see the post office department stamp on there, yes or no?

A Yes.

Q Does that refresh your recollection as to when you sent the letter?

A October 9th --

Q Does it?

A Yes.

Q When did you send the letter?

A October 9, 1975.

* * *

(Tr. pp. 519 - 520)

Q In other words, physically, where did you work?

A Point Lookout, what we call the Administration and Laboratory Building.

Q In your department, did you have other facilities that were removed from the building you worked in?

A Yes.

Q Will you tell us what they were?

A The key one --

Q Not the key one, all of them.

A Where the most employees were was on Hanes Avenue, Freeport. We also had the Long Creek marina in Freeport; the Marine Nature Study area in Oceanside. We had the East Marina and the West Marina on the peninsula

that I was located. We now have the Inwood Marina where the same personnel that were in Hanes, in Hinderland, were.

Q Is that an expression in your department?

A No, it's personal, it's Germanic, really.

Q Would your duties take you to these other hinderland facilities?

A The time span that is pertinent to this investigation, virtually never.

Q By the way, you are an active Republican, are you not?

A I am, but a very independently minded one.

* * *

(Tr. p. 520)

Q To your knowledge, does the Republican Party periodically send out finance letters? Do you know what I mean by finance letters?

A I sure do. There are many many forms for many Republican sources, yes.

Q They actively solicit contributions, right?

A Yes.

Q Are you familiar with the Town of Hempstead Republican Finance Committee?

A It is common knowledge, yes.

* * *

(Tr. p. 521)

Q There is no question in your mind, is there, sir, that you gave these 3 x 5 cards to various supervisors; correct?

A I gave the 3 x 5 cards referred to by Mr. Druker, which only describes one card, the card he asked me about.

* * *

(Tr. p. 522)

Q Mr. Graber, I show you Government's Exhibit 12 in evidence and I ask you, can you tell me what it is?

A This is not a card, this is --let me see. 1975. I believe, and I can verify it, I have a document that this is the -- wait a minute. This card has nothing to do with this investigation. To be one hundred percent certain, your Honor, I would have to look at my computer run. From the form of it, and I have a photocopy here, this card was 1975, I would believe, at least in form, because I have it right here and that was a cost-of-living -- it was after the investigation, but the $12,318 I would have to verify. It looks like the 1975 card. Not the one that Mr. Druker asked me about. It looks like it.

* * *

(Tr. p.522)

Q The card that Mr. Druker asked you about, you did distribute to supervisors?

A I so testified.

* * *

(Tr. pp. 524 - 526)

Q By the way, Mr. Graber, have you served in the armed forces of the United States?

A I served in the armed forces of the United States in World War II.

Q In what branch?

MR. CADEN: I object to the relevance.

MR. SUTTER: I will tie it up.

THE COURT: Overruled.

Q What branch?

A At that time, they called it the Air Corps.

Q It wasn't the Air Force at that time?

A No.

Q For how long did you serve, sir?

A Rule of thumb, almost four years.

Q Were you honorably discharged?

A Honorably discharged.

(Continued on next page.)

BY MR. SUTTER:

Q Did you receive a service connected disability?

A Yes,I did, sir.

Q What percentage?

A Originally fifty, ultimately thirty.

Q What was it for, sir?

A Service induced anxiety with several manifestations including weakened memory capability and inability to think clearly under extreme stress.

Q Did that disability continue while you were testifying before the Grand Jury?

A That was a very traumatic experience. I was under extreme stress, yes.

Q Mr. Graber, did you knowingly lie or make any misstatement before the Grand Jury when you testified?

A No sir.

* * *

(Tr. pp.526 - 527a)

MR. SUTTER: Might we have a brief sidebar, your Honor?

THE COURT: Yes.

(Sidebar discussion as follows:)

MR. SUTTER: Judge, I don't believe I have anything more, but I don't want any more trouble from him. I would like to recess for lunch at this time and my intent right now is not to ask him anything more

so you can prepare for your cross.

MR. CADEN: Why don't we take a ten-minute recess and if that's still the decision -- my cross won't be very long.

MR. SUTTER: What's the difference if we take lunch now or later? It's noontime.

MR. CADEN: Let me say this. My observation, if this is the end of the direct --

MR. SUTTER: That is my point and my only point is this. We are going to finish the case, Judge, and I think you're on trial tomorrow because we're not going to call anybody else.

MR. CADEN: My only observation if we can ascertain if this is tne end of the direct in ten or fifteen minutes.

MR. SUTTER: I'm telling you it's my present intention. This guy is a boat load of bananas. If he insists upon something, I'm going to have to do it, you follow? If it does get into any other areas, they're not going to be of any significance, I can assure you.

MR. CADEN: I would like to start because if I have to prepare a summation based upon what I have heard, I prefer to work on it during my lunch hour.

MR. SUTTER: We don't have to sum up in a non-jury case.

MR. CADEN: I am going to say some things.

THE COURT: We will have a recess now until 1:05.

* * *

(Tr. pp. 530 - 546a)

Q Did Agent Disler ask you whether or not you solicited contributions for the Town of Hempstead Republican Finance Committee from fellow employees of the Department of Conservation and Waterways?

A That is not what Agent Disler asked me.

Q He did not ask you that question?

A That way.

Q No? He did not ask you that question?

A Sir --

Q He did not ask you that question?

A He said "Did you collect --"

Q No, did he ask you the question. Try to bear with me.

THE COURT: I think he's talking about what verb

was used.

THE WITNESS: That is it, your Honor.

A He said "Did you collect?"

Q Did Agent Disler ever ask you whether or not you solicited contributions from the Town -- for the Town of Hempstead Republican Finance Committee from co-employees?

A Agent Disler asked me did I collect. He did not use the word "solicit" at all.

Q Did you ever tell Agent Disler that you had absolutely nothing to do with soliciting contributions from co-workers for the Town of Hempstead Republican Finance Committee?

A Repeat the question, please.

MR. CADEN: Would you be kind enough?

(Record read.)

A Agent Disler --

Q Can you answer that question yes or no?

A In that form?

MR. SUTTER: If he can.

A I don't believe I can answer that yes or no. I can answer it truthfully, though.

Q I'm not asking you if you can answer it truthfully. I'm asking you whether you can answer it yes or no.

MR. SUTTER: I think --

THE COURT: No, he is being asked whether or not his answer, if yes or no, would be a fair answer to the question. Now, the question was -- would you read it?

(Record read.)

THE COURT: The question first is, can you answer it yes or no, if your answer to that --

THE WITNESS: I cannot answer it yes or no.

THE COURT: His answer is no.

THE WITNESS: I can answer it --

THE COURT: Your answer is --

THE WITNESS: It's an oversimplistic thing according to the transcript. I cannot answer it yes or no. --

Q Is it your testimony that you did not tell Agent Disler that you solicited contributions from co-employees for the Town of Hempstead Republican Finance Committee?

A Agent Disler only asked me did you collect --

Q Did you hear my question, sir, did you hear my question. It's important that you listen to my question. Would you read the question?

(Record read.)

THE COURT: Just phrased affirmatively?

MR. CADEN: That's correct.

Q Would you like the question again to you?

A I answered --

Q Would you like to have the question read again?

A But your question is not in the frame of reference of what Agent --

THE COURT: If I may explain --

THE WITNESS: I would love to answer and I'm not trying to duck it.

THE COURT: If you would just listen to me I will explain the nature of these questions.

THE WITNESS: Yes.

THE COURT: FBI Agents make memorandas of their interviews. They must.

THE WITNESS: Yes.

THE COURT: What you are being asked is whether you did say to Mr. Disler what Mr. Caden obviously reads to you from Disler's notes.

THE WITNESS: Okay --

THE COURT: Because he's really saying to you "Did you say what Disler says you said or didn't you?" You must bear in mind Disler is still alive.

THE WITNESS: I know Disler. He lives in Massapequa, sir.

Q Did you hear my last question?

A Yes.

THE COURT: Listen to it carefully.

THE WITNESS: I didn't answer it yes or no.

THE COURT: Listen. The word quote, not unquore, is not in the question. Read it again and listen.

THE WITNESS: Let me concentrate rather than listening.

THE COURT: Listen precisely to the question.

(Record read.)

A I will use --

Q Can you answer that question --

A Or a negative --

Q Yes or no.

A There's a trick in there, though. I don't think anybody is trying to trick me.

THE COURT: The question is being asked in the affirmative. When Disler talked to you, did you tell him that you did in fact solicit contributions for the Town of Hempstead Republican Committee from your fellow employees?

THE WITNESS: In other words, what we're saying in essence, did I tell him I did solicit?

THE COURT: That you did do it.

THE WITNESS: Okay, the answer to that is no, he never asked me if I solicited. He asked me --

Q He never asked you --

MR. SUTTER: If the Court please --

MR. CADEN: It's important.

THE COURT: Let him finish.

A The only word he used whs "collect". I remember that. "Did you collect" and in order to answer him I had to define it. I said, "Mr. Disler, can you define what you mean by that? Do you mean if I actually solicited donations from individuals in my department, like one would if he went from doorbell to doorbell to doorbell in his neighborhood," meaning to each and every or virtually each and every person. Mr. Disler says "Yes, that's what I mean," and of course to that type of solicitation the answer is no and this is what I so told Mr. Disler, to that type of each and every or virtually each and every person like you do when you go down the block ringing doorbells. I have this "doorbells" and it's also in my second discussion with Mr. Disler via telephone because then we have a somewhat different version on the second -- when he called me and said that unlike the other departments --

Q I must ask you --

A I'll stop there. Okay.

In that frame of reference, my answer, after I got Mr. Disler to qualify what he meant by collect, the answer was then no.

(Continued next page.)

Q You admitted to Agent Disler then that you in fact did solicit employees, co-employees, but not directly?

MR. SUTTER: Objection.

THE COURT: On what ground?

MR. SUTTER: On the basis --

THE COURT: You're arguing with him because of the word "then" in the question?

MR. SUTTER: Not only that, your Honor, but that's not the testimony of this witness.

THE COURT: I'll sustain the objection to the form of the question.

MR. SUTTER: Thank you, sir.

Q Did you tell Agent Disler that you solicited employee contributions?

A He never asked me.

Q Never asked you?

A Other than what he said, "Do you collect," I asked for a definition. By definition, going down the block, doorbell by doorbell. He said, "Yes, that's what I mean." I said, "The answer is no," and then his next question -- I may have the order wrong, you know. I don't know which order, but my notes "When you're hired by the Department of Conservation Waterways, did Francis D. Purcell tell you about one percent?" I said unequivocally, "No."

MR. SUTTER: Excuse me, are we still referring to the initial interview?

MR. CADEN: That's the one I'm talking about.

THE COURT: The face-to-face interview?

MR. SUTTER: Thank you.

THE COURT: Explain what you're showing.

Q I'm showing you a document prepared by Agent Disler on the date indicated on the page. I would like you to read that portion of the paragraph, page two, where I have the sentence underlined in blue.

MR. SUTTER: Mr. Caden, would you be kind enough to underline mine?

THE WITNESS: I spotted something. It would take me a second to know what I'm doing.

THE COURT: Take your time. Point it out to counsel.

MR. CADEN: Yes, come over.

MR. SUTTER: Yes, I'm coming over.

THE COURT: No games.

A In my first --

THE COURT: Just a minute.

Q Have you had an opportunity to look at it?

A Yes, sir.

Q Have you had an opportunity to look at it? Are

you listening to my question?

A Yes, sir, I have had an opportunity.

THE COURT: There's no question pending, so just hold your fire.

THE WITNESS: Okay, sir.

MR. SUTTER: Thank you, Mr. Caden.

Q Have you had sufficient time to look at the report?

A Yes.

THE COURT: Do you see it in context?

Q Do you see it within its context?

A Yes.

Q Does that refresh your recollection as to what you told Agent Disler on the first interview which took place in your office? Does that refresh your recollection? That's what I'm asking you.

A It only says.

Q Does it refresh your recollection?

A No, in this --

Q The answer is "no"?

A The answer is no, I would dispute it. On that interview I notice he says --

Q In other words, the answer --

A He merely says as a collecting point.

Q Mr. Graber, the answer is no?

A No, it does not.

Q Your answer is no, it does not refresh your recollection?

A I would just go further than that.

THE COURT: He said "It does not refresh my recollection and I dispute its correctness"; is that right?

THE WITNESS: Yes.

A (Cont'g) Walt virtually took no notes.

Q What you dispute is you being attributed as having said during the course of that interview that you had absolutely nothing to do with soliciting these contributions and that you had merely acted as a collecting point for any contribution employees may desire to give. Is that what you dispute you didn't say that?

A Either soliciting or collecting, either.

Q I direct your attention to the following page, page three. Take a look. I also underlined something in blue.

MR. SUTTER: We'll do it informally, your Honor.

THE COURT: Very well.

Q I would like you to read the first paragraph of page three ofthe report.

A Yes, sir -- that's page three?

Q Take your time.

A Yes.

Q Have you had an opportunity to read the paragraph?

MR. SUTTER: I haven't even read it.

MR. CADEN: I'm asking him.

THE COURT: He'll tell you when he's finished.

MR. CADEN: Fine, your Honor. I don't want to rush him.

MR. SUTTER: Of course not.

Q I'm only asking you torefresh your recollection, Mr. Graber, on the document that I showed you. Would you be kind enough to just use my document?

A All right.

Q Thank you.

A This was written the same time. I have no recollection of that time nor the debriefing which I made immediately of the word "solicitation" ever being used or anything other than that --

Q That does not refresh your recollection?

A No, sir.

Q As to what you told Agent Disler?

A No, sir.

Q You do not recall repeating to him a second time during the course of the interview that you had never solicited contributions from employees of the Town of Hempstead?

A I say on the first interview he didn't ask me that.

Q Please answer my question, if you'll just answer my question.

A Okay.

(Question read back.)

A (Cont'g) No, I do not, absolutely no memory, from memory or my own debriefing either.

Q As I understand it, it's your testimony, your recollection that you did not say those things?

A That we did not get into that area other than one brief sentence that I've already previously --

THE COURT: I think his question is this. Before he asks you "Do you recall it," and now he's asked you "Do you say flatly that it was not said?"

THE WITNESS: I say flatly both from memory and record it was not said.

Q And what was not said is that you had never solicited; that is, that you told Agent Disler that you had never solicited employees to make contributions to the

Town of Hempstead Republican Finance Committee?

THE COURT: You're quoted as saying "I never solicited"?

THE WITNESS: I understand that.

THE COURT: He's saying, "Do you say flatly that you never used that expression on that occasion to Disler?"

THE WITNESS: I did not use this expression on that occasion to Mr. Disler.

Q And by that, of course, that expression, as I understand it -- let me withdraw it.

I'm going to direct your attention to August 8th of 1975. That is the date I represent to you to be the date that you spoke to Mr. Druker down at Mr. Druker's office subsequent to your Grand Jury appearance.

THE COURT: August?

MR. CADEN: August 8, 1975.

Q I'd be more than happy, if you don't have any notes that would refresh your recollection, to show you a document that may help you.

A The date, August 8, your Honor, obviously I wouldn't know what we're talking about.

THE COURT: I think Mr. Caden has identified it as the occasion on which you went back in to see

Mr. Druker with or at the same time that Mr. Kilgannon was along?

MR. CADEN: I think that is the time. It was the only other time --

THE WITNESS: There's been many other times, first with the FBI man --

THE COURT: No, this is just with Mr. Druker.

THE WITNESS: I've never seen --

Q I'm talking about the FBI man. You're correct.

A I wouldn't know the date, but beyond that, let's shoot. Okay.

Q During your conversation with Mr. Druker and the FBI agent --

MR. SUTTER: Excuse me, Mr. Caden?

MR. CADEN: Yes, I haven't finished the question.

MR. SUTTER: I would like a copy of the document that you are looking at.

MR. CADEN: I don't need to. He remembers the incident.

A I remember going down --

MR. SUTTER: Please.

Judge, may I please have a copy of the document?

Thank you, Mr. Caden.

ss/ss
1pm3

MR. CADEN: You're welcome, Mr. Sutter.

BY MR. CADEN:

Q Mr. Graber, we're back, hopefully, at Mr. Druker's office with the FBI agent. Do you recall that day?

A Yes sir.

Q Do you recall telling Mr. Druker that the testimony that you had previously furnished to the Federal Grand Jury on July 11, 1975 was true and correct?

MR. SUTTER: I object to the form of that, if your Honor please. It's not what this memorandum states.

MR. CADEN: Look, your Honor, I'm not interested in Mr. Sutter's observations. I'm asking a question at this point. I haven't shown anything to the defendant.

THE COURT: You may ask the question in that form.

A That was a very exciting --

Q I didn't ask you how exciting it was, Mr. Graber; I'm sorry. I asked whether, when you spoke to Mr. Druker with the FBI agent that day, did you tell Mr. Druker that the testimony that you had previously furnished to the Federal Grand Jury on July 11, 1975 was true and correct?

A I have no recollection of making that statement; however, having seen my Grand --

Q You don't know what you said?

A Seeing my Grand Jury notes, I would say my Grand Jury notes are true. My Grand Jury testimony is true.

Q And correct and that's what you recall --

A What do you mean by the word "correct" sir?

Q If you don't know, I don't think I'm going to define it. You don't know what the word "correct" means? Are you telling me --

THE COURT: No, I think he's confused. Do you mean is the transcript true and correct of what you said or are you asking him did you tell Mr. Druker on August 8, 1975 that the testimony that you had given --

MR. CADEN: That's true --

THE COURT: -- is true --

MR. CADEN: The question that I asked was whether or not the defendant told Mr. Druker that he -- the testimony that he had previously furnished to the Federal Grand Jury was true and accurate.

A I would say while I have no recollection I wouldn't retract --

Q You don't have any recollection; is that what you're telling me?

A And I wouldn't retract it -- yes, I don't have any recollection of what we discussed in that regard.

Q Are you aware of your own knowledge, Mr. Graber, of gross abuses in the one percent system? Are you aware?

MR. SUTTER: Objection. Number one, form. Number two, relevancy.

MR. CADEN: It's certainly relevant.

THE COURT: Objection is overruled.

A Am I aware of gross abuses in the one percent system?

Q Yes or no?

A By --

Q Yes or no?

A Let's say yes for the moment. I assume you're going to have me qualify it.

Q No -- the answer is yes?

A Not in my department. Yes, but not in my department. I recall that they --

Q The answer is yes?

THE COURT: No, his answer is yes, but not in his department.

A (Continuing.) Not in my department. I recall something I told Mr. Druker.

Q Something you wrote to him in a letter?

A Also --

Q Something that you wrote to him?

A Something I also said that day. I said that day that my own daughter was extorted once, when she worked in a different department as a seasonal employee and that I have no -- what would the word be -- sympathy for anybody who extorts.

* * *

2pm1
hs/ss

BY MR. CADEN:

Q Do you recall on January 14, 1976 requesting permission to speak to the District Attorney of Nassau County?

THE COURT: What was that date?

MR. CADEN: January 14, 1976.

THE COURT: That is the first part of this year?

MR. CADEN: That is correct.

A I am not sure of the date, but I do recall requesting to speak to the chief of the political corruption bureau of the County of Nassau.

Q Do you recall that you wished to speak to them that day, that you asked to talk to them and you came down around 7 o'clock in the morning?

A I did.

Q Do you recall if you spoke to an individual by the name of Padgett?

THE COURT: What was that name?

MR. CADEN: Padgett, P-a-d-g-e-t-t.

THE WITNESS: Mr. Padgett --

Q Did you speak to Mr. Padgett, yes or no?

A He wasn't in the room throughout the entire interview --

Q Fine, but he was present?

A He was there in the early part and seemed to lose

interest. Perha . he had official duties --

Q Do you recall if Mr. Zoufer (ph) was also present?

A Mr. Zoufer was present throughout.

Q Mr. Zoufer at that time was an Assistant District Attorney?

A That is correct.

Q He is no longer that?

A I have read in the newspapers.

Q You know he works for Mr. Sutter; is that correct?

A Yes, that is what I read.

Q Do you recall also whether or not an investigator by the name of Bjourkland was also present during that interview?

A During the course of the interview various investigators were in and out. I do not know the names of any of them who were present either in part or in whole.

Q Do you recall telling these men, either individually or collectively, that you acted strictly as a conduit for the contributions from your department and the contributions made by your department employees to the Republican Finance Committee?

A I could conceivably -- the word "conduit" I have

never used. That's not my word.

Q I have asked you if you used that word or told them that in substance?

MR. SUTTER: I object to that. I do not know which question he wants him to answer.

THE COURT: I think you ought to separate it.

Q Did you ever tell them that you acted strictly as a conduit for those contributions?

A The word "strictly" I do not recall. That I did transmit, et cetera, et cetera. I think I mentioned "cards." I think I mentioned --

Q I did not ask you that.

A Right.

Q I asked you did you tell them that you acted strictly as a conduit of the contributions?

A I do not recall the word "strictly."

Q But you do recall the word "conduit?"

A I do not recall the word "conduit."

Q So you don't recall any of that?

A I simply say --

MR. SUTTER: Objection to the form of the question.

A -- I don't use the word "conduit." It is not my word.

MR. SUTTER: Pardon me?

THE COURT: He simply said he does not recall having used either of those two words.

THE WITNESS: But I am sure in the discussion -- yes, I recall him asking me, "And what did you do with the contributions? Did you send them by U.S. Mail?"

And let me see -- I said, "No, they went to Town Hall." I was there for anotherpurpose. I was at that -- to the D.A. for help on another matter. That's all I can recall.

Q Well, you came to the District Attorney because you wanted to speak to them about this particular case, did you not?

A I came to them because -_

Q Can you answer that question?

A Yes, it would help on this particular case.

Q Now, if I showed you a particular document and let you read the bottom paragraph on page 2 of the document and the top of page 3 of the document and ask you if you recall or does it refresh your recollection as to what you told the Nassau County District Attorney --

A May I read the whole document?

Q If you feel it is necessary, Mr. Graber.

Do whatyou like.

A Thank you, sir.

(Pause.)

THE WITNESS: Mr. Caden, am I allowed to mark this document in any way?

MR. CADEN: You can do whatever you like with the document.

THE WITNESS: Okay.

THE COURT: Don't obliterate anything.

MR. CADEN: Counsel was furnished a copy of that document prior to trial.

Q Are you saying that you have not seen it?

A You hadn't asked me before. Yes, I have seen it.

Q You have read the document before, haven't you?

A I tell you why --

Q Just answer my question yes or no. It saves a lot of time.

Haven't you read it before?

A I have read it before --

Q Excuse me --

A --and have discussed inaccuracies in it, not on the question you are asking but in paragraphs 1 and --

MR. CADEN: I know.

A (Continuing) -- in other words, I was not read my rights. I was told that this would be an informal meeting with no rights need be read, no notes were to be taken, no tapes

made.

Q Excuse me for interrupting.

A Yes.

Q Doyou recall what my question to you was?

A I am telling you --

Q Do you recall what my question to you was?

A Yes.

Q What was my question?

A The question was something, did I say --

THE COURT: No, had you read this?

THE WITNESS: Strictly a conduit?

Q No.

You are not listening. That is why you do not respond to the questions.

I asked you whether or not you had seen that report prior to the trial and you answered in the affirmative.

A Yes, I did.

Q I asked you whether or not you had read --

A Right, and I told you about that error and that error --

Q And you have read it and discussed it with your counsel?

A No no. Really, we didn't discuss it.

Q He showed it to you and asked you to read it and

then refused to discuss it with you?

MR. SUTTER: I object to thatquestion.

THE COURT: Let us move on with the main line.

A In the preparation of our trial, this was not a factor.

Q Take a look at the document. I will let you read it. Take your time, please.

(Pause.)

A Mr. Caden, I am ready to go ahead with you now, sir.

Q You nave had an opportunity to read the document?

A Yes sir. I find about -- and they wouldn't be incriminating to me -- at least six errors.

Q Have you had an opportunity to read the document?

A Yes.

Q Q Now, I asked you a question concerning contributions and I ask you to read page 3 and in particular that portion of page 3 which is underlined in blue?

A Right.

Q Have you had an opportunity to read page 3?

A Yes.

MR. SUTTER: Excuse me, Judge. May I have a moment, your Honor?

THE WITNESS: I'd like to point --

THE COURT: Just a minute.

THE WITNESS: -- to page 2, sir.

Q Have you had an opportunity to look at page 3?

A I have had an opportunity to look at page 3 and also the final paragraph of page 2.

Q Does that refresh your recollection?

A Never used the words there "strictly as a conduit." I do know I said I transmitted or words more to my style and on page 2 I --

A I am not asking you about page 2. I am only asking you about that portion of the report that is on page 3 underlined in blue.

A Okay.

Q Can you answer my question?

A The question is do I remember saying those words.

Q That is correct.

A No.

THE WITNESS: Your Honor, may I ask a question? Am I allowed to ask a question?

THE COURT: Yes, but you cannot compel an answer. But go ahead.

THE WITNESS: The question is in regards to what was just shown me. Is my lawyer at the conclusion allowed to refer to it with me?

THE COURT: Certainly he can take you on redirect.

THE WITNESS: Okay, then at conclusion I see something there that I'd like to discuss with you, okay?

MR. SUTTER: Surely.

Q So it is your testimony, as I understand it, that you did not tell the District Attorney of Nassau County on June 14th --

THE COURT: No, his testimony is that he did not use those words -- that form of expression, but used the expression "transmit"; is that right?

THE WITNESS: That would be correct, your Honor.

Q And that was your function to transmit contributions?

A One of my functions.

(Continued next page.)

2/2

HS:m

Q Not to solicit contributions?

A This is what I will discuss --

Q Not to discuss contributions --

A There is nothing in there relating to that, sir.

Q Not to solicit contributions?

A Wait a minute. Maybe I don't understand the form of the question.

Q Are you unclear as to whether you --

A Try to clarify the question for me, please?

MR. CADEN: Yes. Would you read the question again, please?

(Question read.)

Q Do you understand the question, not to solicit contributions?

A As to --

Q Not to solicit contributions?

MR. SUTTER: May I object --

THE WITNESS: I --

MR. SUTTER: Excuse me.

THE WITNESS: I don't understand.

Q You don't understand the question?

A Honestly.

Q You do not have to say "honestly."

You do not understand the question?

A I don't understand what you are saying, no. I understand that you are saying not to solicit contributions--

Q That was not one of your functions?

A Where does it say that?

Q I asked you the question, one of your functions was not to solicit contributions?

A It was neither not or was -- I don't understand.

Q Would you like the answer reread?

THE COURT: Now, please, the question was imperfect.

THE WITNESS: I am having trouble understanding.

THE COURT: The question was imperfect because the negative was misplaced.

Q You indicated one of the gross abuses that you can recall of the one percent system was money being extorted from your daughter; is that correct?

A Yes.

Q Money extorted in order to make a political contribution to the Town of Hempstead Republican Finance Committee?

A I have had an expression for about ten years now --

Q Can you answer my question?

A -- by lowly labor foremen who do things on their

own, not by orders.

Q I didn't ask the circumstances. But it is your testimony that you knew of a circumstance -- a situation involving your daughter where she was forced to make contributions to the Town of Hempstead Finance Committee by another employee?

A A lowly employee. And of course it is by hearsay, since my daughter told me and I didn't witness it.

Q You believe what your daughter tells you, don't you?

A I believe she was accurate.

Q Did you ever recall -- and I am talking about Agent Disler again, in that first FBI interview back in June of 1975 which took place in your office -- what are you doing, Mr. Graber?

MR. SUTTER: He is looking at his notes.

THE WITNESS: I have my --

MR. SUTTER: Excuse me, please, Mr. Graber?

MR. CADEN: I will wait until he finishes reading his notes.

MR. SUTTER: The record should indicate that he was taking some yellow sheets of paper which obviously he has writing on and placing them in front of him.

THE COURT: These notes which he had earlier referred to as debriefing notes of the interview.

Q Would you like an opportunity to read them again?

A Not at the moment, sir. According to what you ask, I may or may not need to.

Q Did you --

THE WITNESS: Your Honor, I don't normally like water. I am not a water drinker, neither a boozer, but I am absolutely parched.

(Pause.)

THE WITNESS: There's a hair in here. My wife is here and she knows I'm a nut about dirty spoons and the like.

THE COURT: Here comes another cup.

THE WITNESS: I don't like water that much. I was just so parched. I will keep the rest of it here when I need it.

THE COURT: Here comes a clearer glass.

Q Ready, Mr. Graber?

A Yes.

Q Drink your water?

A Yes.

Q Have you had occasion now to remember the

interview with Agent Disler back in June of 1975? Do you recall telling Agent Disler that you knew of no one who had ever been approached to contributed to the Republican Party?

A In our department.

Q I did not say "in our department," did I? I did not say that. I asked you --

A Excuse me.

Q -- if you told Agent Disler during the course of your interview that you knew of no one who had ever been approached to contribute to the Republican Party; yes or no?

A I feel that Mr. Disler --

MR. SUTTER: I object to the question. It is not in the report, your Honor.

THE COURT: Would you show Mr. Sutter what it is that is the foundation of your question.

(Document shown to counsel.)

THE WITNESS: I am right, your Honor. I am right.

Q No, no. Have you had an opportunity --

MR. SUTTER: Hold it.

I withdraw the objection. It is in the report.

THE WITNESS: Restate the question, please?

Q Did you tell Agent Disler, on the first interview in JUne of 1975, that you knew of no one who had ever

been approached to contribute to the Republican Party?

A Before I read my debriefing notes I had already said it and I find it in my debriefing notes. My words were certain references to the Conservation and the Waterways Department. We are talking about my department, not involved in such misdeeds.

Q But I did not ask you that question.

A I'd have to stand on my debriefing --

Q I think you ought to answer my question.

A Okay.

Q Did you tell him that you knew of no one who had ever been approached to contribute to the Republican Party?

A I don't know if he asked me that per se or what I answered. I have no recollection other than -- after all, we are talking about well over a year ago and --

Q Your answer is that you don't recall?

A -- I do not recall, yes.

Q But you do recall writing a letter to Mr. Druker on October 8, 1975, in which you indicated that you were aware of abuses in the implementation of the concept of the one percent system as far as the small number of Town of Hempstead employees were concerned?

A Other than by hearsay.

mp/ss
3pm1

BY MR. CADEN:

Q Did you ever ask anybody to make a political contribution to the Republican Party?

A Yes.

Q Was that when you were a member or still a member of the West Hempstead Republican Club?

A That would be true.

Q And that was as a member going out and asking people in the neighborhood within your election district to make contributions to the Republican Party?

A That would be one of the ways, in my community.

Q Is that true?

A Yes.

Q It's true?

A Yes

Q And that's the only time thatyou ever asked a person to make a contribution to the Republican Party? It was in that capacity?

THE COURT: That is a question he was asked and answered at an earlier time?

MR. CADEN: I don't believe he was.

THE WITNESS: That's why I stopped. I didn't understand.

THE COURT: You are now asking him, have you ever?

Q Your testimony was --

A Where is this? I am not with it.

THE COURT: Repeat the question.

THE WITNESS: What are we talking about?

THE COURT: This is apart from interviews with anybody.

THE WITNESS: That's what I thought.

THE COURT: This is real life?

MR. CADEN: That is correct.

THE COURT: Repeat the question.

(Record read.)

A Is that the only time in that capacity -- is it tne only time I asked anybody for a contribution? No, that isn't the only time, no.

Q When other than under those circumstances did you ask people to make contributions?

I have done it -- I sold tickets to Republican functions to people who are not in my neighborhood who happen to have enough money. I have one dear friend --

Q That wasn't in your capacity in the West Hempstead --

A Yes.

Q Outside?

A In the Department of Conservation and Waterways.

Q You solicited employees, is that what you are saying?

A (No response.)

Q That's what you are saying?

MR. SUTTER: That is an unfair question, I object.

MR. CADEN: Is there an objection or argument?

MR. SUTTER: Objection.

THE COURT: Sustained.

MR. SUTTER: Thank you.

MR. CADEN: I have no other questions.

MR. SUTTER: Stay up there.

THE WITNESS: Oh. I see something.

(Pause.)

REDIRECT EXAMINATION

* * *

(Tr. pp. 567 - 575)

Q Now, after you had this interview with Agent Distler, did you have reduced to writing a summary of the interview?

A Yes.

Q That's what you have in front of you, correct?

A Yes.

Q Okay.

Now, thereafter, did you receive a telephone call from Agent Distler?

A A shocking telephone call, yes.

Q Did you make notes concerning that telephone call?

A Yes.

Q When?

A I want to be honest. It was either at the instant after, a half hour later, or at home that evening. But that night.

Q Did Agent Distler in that telephone call ask you why you didn't tell him --

MR. CADEN: Objection to the leading.

THE COURT: What?

MR. CADEN: Objection to the leading.

MR. SUTTER: I will rephrase it and withdraw it, your Honor.

Q Answer this one yes or no, did you discuss with Agent Distler why you didn't tell him about transmitting the checks of employees who wished to voluntarily contribute?

A I can recall the spirit of it if not the words.

Q Give us your best recollection?

MR. CADEN: The question calle for yes or no.

A If it called for yes or no, repeat the question.

(Whereupon, the last question was read by the Reporter.)

A Yes.

Q What did you say, sir?

A I said something to this effect, "If you remember, Agent Distler, you only asked me one question in regard to any role I might have played, and if you recall we qualified that the only thing you were interested in is if I went down the block house by house --" I kept using the ringing doorbells, in other words, most everybody, virtually everybody -

Q Essentially you told him, you didn't ask me about that?

A That is correct.

Q Mr. Graber, is there any question that in your position with the Town of Hempstead that you, while maybe not directly solicited, okay, directed other employees to go out and get political contributions forthe Republican Party if they

could get them voluntarily?

MR. CADEN: Object to the leading.

THE COURT: Overruled.

A Is there an objection on the table?

THE COURT: It was overruled, which means you may answer.

A Okay.

THE COURT: Have you the question in mind?

THE WITNESS: Right. I think the question is was there any occasion -

Q What I am getting at is this, Ray, did you tell supervisors to go out and see if they can get political contributions for the Republican Party?

A When -- stop me if I am not answering it right --

Q It is a simple question. You did, didn't you?

A I want to tell you how it started.

Q Did you do that?

A Yes, of course.

Q You are a committeeman, were you not?

A No. I know you had believed so. So there is no misunderstanding on the record, I used the word independent Republican, years ago there was something I didn't like so I quit.

Q You are not a committeeman but you were active?

A Right.

Q You solicited many people forcontributions?

A Yes.

Q Did you ever put the arm on anybody?

A That is not my style.

Q Answer the question.

A No. I never put the arm on anybody no way.

Q Now, let's get back to this conduit. Do you recall being questions about that by Mr. Caden?

A Yes.

THE COURT: This is with reference to the Nassau District Attorney's Office --

THE WITNESS: I would like to show you something if you don't see it yourself.

MR. SUTTER: Bear with me if I don't see it.

MR. CADEN: I object to the colloquy.

THE COURT: Please, yes. Let's move along.

(Continued next page.)

3/2 MP

Q Do you know what the word conduit means?

A I have a mental image, but under these conditions and stress, I can't --

Q How about a tube that goes in one end and out the other?

A Pipeline is another expression used.

Q Fair enough. Now, essentially, in addition to soliciting your supervisors, that was one of your functions; right, you were the guy to whom they gave the checks; right?

A Yes, except in other words -- you used soliciting the supervisors --

Q You didn't solicit them --

A Virtually all of those the other day said, Ray Graber never asked them for money.

Q You asked them to go out and get money if they could?

A As directed by my commissioner, right.

Q When the checks came in, who got them?

A Some came in directly, some to other people and then to me, and some by mail.

Q What did you do with them?

A I sent them to the finance chairman by hand. By hand.

Q You were transmitting?

A I was a transmitter.

Q You transmitted checks, right?

A Yes.

Q We delved at great length into whether you used the words "strictly a conduit," do you recall that?

A A word more foreign to me than pipeline, for example.

Q Let me read to you something: "He said he acted strictly as a conduit of the contributions from the departmental employees to the Republican Committee through Mr. Parisi at Town Hall."

You deny using those words?

A Yes.

Q Is it a fair description of what you told the Nassau County District Attorney?

THE COURT: In their words, is it a fair description of your acts, though not using your words --

THE WITNESS: The word "strictly" bothers me.

Q Mr. Graber, please bear with me and try to listen to Judge Dooling.

THE COURT: He is sticking on the word "strictly."

Q What I am trying to bring out, is that a fair description of your activities, though not in your exact words?

THE COURT: Meaning that he received checks

from departmental employees and sent them to --

THE WITNESS: Principall, yes.

Q The words are just a little different,right?

MR. CADEN: I object.

MR. SUTTER: You can't shake your head.

THE COURT: It is at war with his testimony.

MR. SUTTER: Withdrawn, your Honor.

Q When was your daughter a Town employee?

A Approximately 1968 or '69.

Q Incidentally, what did she do?

A A recreation aide.

Q That means you work around the beach?

A You could. She had to work in a park and say let's play games and so forth with the children.

Q Were you asked whether or not you knew of anybody having pressure put on them to make a political contribution to the Town of Hempstead Republican Committee?

A I don't recall those exact words.

Q In essence.

THE COURT: This is in the Nassau County interview?

MR. SUTTER: Yes, your Honor.

THE WITNESS: I'm sorry.

Q I'm sorry, I'm going back to the FBI --

A I am thinking of the FBI. Okay.

Now, okay. Have you heard about the one percent business of kickbacks --

Q Please answer my question. Did any law enforcement authority ask you whether or not you knew of any cases where pressure was put on in order to obtain --

A No, I was not asked. If you meanthat in the sense, do you know and will you cooperate and name the names, the answer is no.

Q I didn't ask you that.

A Oh.

Q Did any law enforcement official, FBI, United States Attorney, Nassau County District Attorney, Nassau County District Attorney Investigator, ever ask you whether or not you knew of any instance wherein somebody was pressured into paying a one percent contribution?

A To the best of my recollection, no.

Q Were you asked by any other of those aforesaid persons whether or not you knew of any pressure in your department concerning contributions?

A To the best of my recollection, no.

But I just have to answer the question. To the best of my recollection, no.

Q But didyou tell them you didn't know of it?

A In my department, I was proud of that.

Q You knew of it elsewhere, did you not, sir?

A All by hearsay except my daughter, I believe, was credible.

Q That is a question of law, whether that is hearsay.

A I told my daughter to go back and --

Q Don't tell us what you told her.

A Okay.

Q So when you answered questions concerning that, were you referring to your own department?

A Yes.

MR. SUTTER: Judge, if I could have a mid-afternoon recess I think I will be done in two minutes. He obviously wants to ask me something.

THE WITNES: Yes.

THE COURT: We will have a short recess.

(A recess was taken.)

EXCERPTS OF TESTIMONY OF MR. DISTLER (Tr. pp. 576-587)
(pp. 375a-380a)

(Tr. p.576)

Q Mr. Distler, by whom are you employed?

A I'm employed with the Federal Bureau of Investigation.

Q In what capacity?

A As a special agent.

* * *

(Tr. pp. 579 - 581)

Q Can you recall what if anything you and Mr. Graber discussed concerning employee contributions within his department?

A Yes, I asked him if he knew anything about the one percent. He indicated that he did and I believe he said he heard about it through scuttlebut from employees in the office.

He further indicated to me that when he first became employed with the Department of Conservation and Waterways he was requested by the Commissioner to act as a collector for any contributions that might be given by employees of that department.

Q Did you ask him whether or not he had anything to do with the soliciting of those contributions?

A Yes, I believe he did.

Q What if anything did Mr. Graber say?

A Mr. Graber said he had nothing to do with the soliciting of the contributions, but then he indicated to me that he did act as a collecting point for the contributions.

Q Did you ask Mr. Graber whether or not he had ever solicited contributions for the Republican Party?

A Yes, I believe I did and he indicated to me that as a member of the West Hempstead Republic Club which he said was a social organization he did on possibly one or two occasions go door to door soliciting contributions for the Republican Party.

Q Did you ask him after he said that or did it ever come up whether or not he had ever solicited contributions from employees of the Town of Hempstead?

A Yes, I think he ended that by saying that he never solicited contributions from the employees of the Town of Hempstead.

Q Did you ask Mr. Graber whether or not he had or knew of anyone who had ever been pressured to contribute to the Republican Party?

MR. SUTTER: Objection to the form, leading.

THE COURT: I think it must be put in this form in these circumstances since the question was put in that form to the defendant.

MR. SUTTER: Very well, sir.

Q Do you want me to repeat the question?

A Yes.

Q Did you ask Mr. Graber if he knew of anyone who had ever been pressured to contribute to the Republican Party?

A Yes, I did. He said he knew of no one that was ever pressured to contribute to the Republican Party.

* * *

(Tr. pp. 582 - 583)

Q And do I take it that you took down notes as you were interviewing Mr. Graber?

A Yes.

Q And do you have those notes?

A No, I do not.

Q What did you do with them?

A I destroyed them.

Q You destroyed your notes?

A Yes sir.

* * *

(Tr. p. 583)

Q You dictated it on the 17th, right?

A Right.

Q That's six days later?

A Yes sir.

Q From these notes that you destroyed?

A Yes.

* * *

(Tr. p. 584)

Q Agent, what I'm getting down to is a very simple proposition, okay? You don't recall, do you, sir, the exact form of the question that you put to Mr. Graber?

A What question are you referring to?

Q Any of them. Other than your normal routine identification, correct, and generally what you questioned him on?

A Yes, that's true.

* * *

(Tr. pp. 584 - 586)

Q Do you recall that later on you called him on the telephone?

A I vaguely recall calling him on the telephone, yes.

Q And made certain interrogations at that point, correct?

A I really don't recall what I spoke to him about on the telephone.

Q Well, it wasn't "How are the ducks doing in the waterways?" Was it?

A No.

Q Did you make any notes or memoranda of that telephone conversation?

A I believe I was reviewing my notes on the initial interview and it must have been some question that I called him on.

Q Mr. Distler, when you asked Mr. Graber about pressure being put on anyone -- okay?

A Yes?

Q Do you recall if you asked him whether he knew of any pressure in his department being put on people?

A I believe it was a general question, "Do you know of anyone who was pressured into contributing to the Republican Party?"

Q But you're not sure of that?

A I'm fairly sure, yes.

Q But not positive?

A Well, no.

Q When you get into this word "soliciting", what did you intend by that word?

A Did he actually go to various employees and ask for contributions.

Q He told you "No"?

A That's right.

* * *

(Tr. p. 587)

Q Sure.

In your interview, did you ever ask Mr. Graber whether or not he suggested to Town of Hempstead employees that they should give a portion of their annual salaries to the Republican Finance Committee?

A No.

Q Did you ever in your interview with Mr. Graber ask him whether or not he had approached Town employees to solicit such contributions?

A No, I didn't.

* * *

EXCERPTS FROM GOVERNMENT'S CLOSING STATEMENT

(Tr. p. 592)

In my opening I indicated to the Court that this defendant would be painted for the individual he was, and that he was in fact Mr. One Percent. He was the man who in effect ran the machinery within his department that was used to solicit and collect the one percent. Every year Mr. Graber did exactly that. He went around and he solicited the contributions.

* * *

(Tr. p. 599)

Of course Mr. Graber is a man with problems. He has his physical problems, I am sure. He has his problems emotionally as well as everyone in this room has those problems. It is part of human nature. We all experience those problems and all go to our jobs and do our work and live with those problems every day. I do not take away the fact that Mr. Graber has problems, physically or emotionally.

* * *

BEST COPY AVAILABLE

DEFENDANT'S APPLICATION/COLLOQUY

UNITED STATES DISTRICT COURT (pp. 382a-391a)

EASTERN DISTRICT OF NEW YORK

----------x

UNITED STATES OF AMERICA,

-against- 76 CR 144

RAYMOND GRABER,

Defendant.

----------x

United States Courthouse
Brooklyn, New York

~~September~~ October 4, 1976
10:00 o'clock A.M.

B e f o r e :

HONORABLE JOHN F. DOOLING, JR., U.S.D.J.

RAYMOND STALKER
OFFICIAL COURT REPORTER

Appearances:

DAVID G. TRAGER, ESQ.
United States Attorney
for the Eastern District of New York

BY: JOHN CADEN, ESQ.
Assistant U.S. Attorney

JOHN SUTTER, ESQ.
Attorney for Defendant

RS/tk

THE CLERK: United States against Raymond Graber.

THE COURT: I sent to Counsel earlier a proposed decision indicated in the note of transmittal, if there was any reason why it should not be entered in the form in which it is prepared.

Could we discuss that this morning, Mr. Sutter?

MR. SUTTER: If your Honor please, I have received certain information from Mr. Graber and I have my licensed private investigator with me here today concerning certain matters which were unknown to the defense and which I believe, althought I cannot accuse at this stage, to have been deliberately withheld from the defense, not by the Prosecution, but by certainly governmental agencies.

I would, if your Honor please, respectfully request that rather than engage in post-judgment release that we receive an adjournment of this matter in order that my investigator may proceed further with respect to certain documentary evidence which was rendered unavailable to us, that is, Mr. Graber, by Commissioner Udell. I would respectfully therefore request that we be afforded a reasonable opportunity to allow my investigator and allow me to assign an attorney to work with Mr. Graber and the investigator to find this evidence out and submit it to your Honor

for your decision. I would point out most respectfully I am engaged in another case. I think your Honor is probably aware of that situation. I will not be personally doing it, but I would ask that we be afforded that opportunity, which should take approximately ten days.

I fail to see any prejudice to the Government in this particular matter, and I would respectfully request we be afforded an adjourment in this proceeding.

THE COURT: Mr. Caden?

MR. CADEN: Well, your Honor, this is the first I have heard of it.

MR. SUTTER: That is true, Judge.

MR. CADEN: Yes, Judge, that is true. I think that Mr. Sutter and Mr. Graber have had a long time to prepare for this case prior to the trial. At the beginning, Mr. Graber indicated that there were documents he may need and indicated he would be able to produce them, and he has produced his documents, including his own notes, and I suspect that Mr. Graber is just not ready for judgment.

But perhaps more importantly than that is that Mr. Sutter has not outlined at all what documents that he's looking for --

THE COURT: He said they were documents, as I

understand, withheld by Commissioner Udell.

MR. SUTTER: That is my information, your Honor. It is my information, and what I want to do, to be able to ascertain whether in fact they were --

MR. CADEN: Those documents, your Honor, I think we should have some idea what those documents are.

THE COURT: I do not see, Mr. Sutter, how they could bear on the issue in the present case.

MR. SUTTER: Judge, all I know is what I have been told by my client and for me to devalue that at this point would be severely prejudicial to him. I assure you, sir, if there are such documents as Mr. Graber indicates, if there are any such conversations that were had concerning certain witnesses that testified in this case, I feel that your Honor would certainly want to consider them. I don't say that it would render your verdict to the contrary. But I'm not sure there are matters you would want to consider. We have people that we didn't call because we couldn't find out exactly what they were going to say.

MR. CADEN: I would like you to stop there, Mr. Sutter. What witnesses are you referring to?

MR. SUTTER: Your prosecution witnesses, sir.

MR. CADEN: You know who the witnesses were --

MR. SUTTER: Yeah, I know, but we didn't know what their previous conversations were. We didn't know what was going on in the town hall.

MR. CADEN: Let me talk about the witnesses. As far as the witnesses are concerned, I am sure Mr. Sutter will affirm that prior to the trial beginning, I had perhaps a hundred files. Those hundred files were a hundred files of a hundred people that were either interviewed by the FBI or myself or were the subject of questionnaires. I indicated to Mr. Sutter anyone of those one hundred files were the subject of his inspection or perusal and if he thought or deemed it necessary to make use of that information, he was entitled to it. I am sure Mr. Sutter will affirm that.

MR. SUTTER: I affirm it and concur completely.

What has happened, certain Government witnesses and matters, we have found out since the termination of the trial, and I shouldn't say we found out, Judge, we have reason to believe that all I'm asking for is a ten-day adjournment to affirm or disaffirm what has been reported to me.

THE COURT: I could not withhold judgment on so vague and thin a showing. If there has been evidence that should have been before the Court and for some

reason that is excusable and it was not brought before the Court, then I think you must resort to post-decision relief.

MR. SUTTER: Will youafford me the opportunity for post-judgment relief?

THE COURT: You know the limits of time.

MR. SUTTER: Yes, I do.

THE COURT: And I will go into that.

Now, is there anything further as to the form of the proposed decision?

MR. SUTTER: Not at this stage, your Honor.

THE COURT: Mr. Caden?

MR. CADEN: Your Honor, I note on page 12, on the bottom paragraph, with the sentence beginning with "however."

THE COURT: Yes?

MR. CADEN: And going to the end of the page, the last line, where the period ends. It is my understanding that the credible evidence, if the Court deems it credible, was not that the defendant told an employee, but the defendant told a supervisor of an employee and it was not an employee in question but rather his supervisor.

THE COURT: With reference to the Marcena incident?

MR. CADEN: At page 312 and 315 of the record.

THE COURT: That is with reference to the alleged Ackerman episode?

MR. CADEN: That's correct.

THE COURT: I think that is right. I think that should be changed so that in the second line of the sentence, however, there was also credible evidence that defendant caused and in the next line strike out that he would not receive substitute "lose overtime." Then I think it was Mr. Marcena who allegedly communicated with the Commissioner Udell, and not Mr. Ackerman.

MR. CADEN: That's correct.

THE COURT: That should be in the next line, the supervisor of the employee in question.

Now, that is the testimony as I recall it. I don't know what caused me to say what I said. I can't blame it on anybody else.

MR. SUTTER: We didn't participate in the preparation, your Honor.

THE COURT: I think that the results indicate that. Now, I should advise you, Mr. Graber, if as I --

MR. SUTTER: Excuse me, your Honor.

THE DEFENDANT: Would you like me to stand here?

MR. SUTTER: I don't mind, sir.

THE COURT: If you wish to prosecute the appeal, it must be filed within ten days.

Now, if you cannot afford Counsel or can no longer afford Counsel and do wish to appeal, do let me know and I will instruct the Clerk of the Court to file a notice of appeal on your behalf, immediately.

Now, you don't have to decide that right now as you stand there at this moment.

THE DEFENDANT: May I ask this, sir?

THE COURT: After consultation with your attorney you conclude that you do not need legal assistance, simply say so and I will direct Mr. Walsh to file a notice of appeal on your behalf and we can take up later the matter of your submitting an affidavit to show your need.

MR. SUTTER: If your Honor please, I do not know whether or not Mr. Graber is financially able to afford Counsel on appeal. I assured this Court as a member of the Bar of this Court that I should file a notice of appeal on Mr. Graber's behalf today, that I shall prosecute that appeal and I could care less whether I receive compensation.

THE COURT: Very well, sir.

MR. SUTTER: I believe that is Mr. Graber's desire, also.

THE COURT: Very well, thank you, gentlemen .

(Whereupon these proceedings were terminated.)

* * *

FINDINGS OF JUDGE DOOLING
(pp. 392a-418a)

UNITED STATES DISTRICT COURT
EASTERN DISTRICT OF NEW YORK

- -X

UNITED STATES OF AMERICA,

-against-

RAYMOND GRABER,

Defendant.

75 CR 166
: SPECIAL FINDINGS OF FACT
and
: GENERAL FINDING

- -X

Appearances:

JOHN CADEN, Esq. (DAVID G. TRAGER, Esq., United States Attorney, of Counsel) for the Government

JOHN JOSEPH SUTTER, Esq. for the defendant

DOOLING, D.J.

In response to allegations of the existence of a corrupt political contribution system in Nassau County the United States Attorney for the Eastern District of New York initiated an investigation, and, in connection with the investigation, a Special Grand Jury was duly impanelled in January 1975 to conduct an inquiry into the charges of a corrupt political contribution system in Nassau County (Rule 6(a), (g), Federal Rules of Criminal Procedure). Specifically, the inquiry was directed to determining whether there was or was not prevalent in Nassau County public offices a system under which employees were expected and required to pay 1% of their annual pay to committees of the Republican Party, whether such a system of contributions,

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if it existed; was voluntary or was brought about by coercion, and whether any violations of federal law were involved. The federal statutes in contemplation were the penal sections of the Civil Rights Act, 18 U.S.C. 241 and 242 and the Hobbs Act, 18 U.S.C. 1951 which, among other things, proscribes affecting commerce or the movement of any articles in commerce by extortion or conspiracy to do so. The investigation continued from January 1975 into the year 1976. In the course of it federal investigators conducted some 1500 interviews, from 300 to 400 witnesses were called in, and their testimony was presented to the Grand Jury.

Witnesses before the Grand Jury gave testimony which indicated that the Department of Conservation and Waterways of the Town of Hempstead was an office in which 1% contributions were given to the Republican Finance Committee of the Town of Hempstead; in that connection there was testimony that indicated that defendant was involved as a solicitor, collector or transmitter of 1% contributions. The defendant was accordingly subpoenaed to appear before the Grand Jury and did appear before the Grand Jury on July 11, 1975.

No substantive indictments have resulted from the Grand Jury investigation of the 1% system that was alleged

to have prevailed in Nassau County public offices, but the progress of the investigation and of the Grand Jury inquiry was regularly reported to the Civil Rights Division of the Department of Justice in Washington and minutes of the Grand Jury proceedings were sent to Washington periodically for its consideration. The only indictments which have resulted from the Grand Jury investigation have been perjury indictments.

The defendant appeared before the January 1975 Special Grand Jury on July 11, 1975 at about 11:00 in the morning. A number of other persons had been subpoenaed to testify before the Grand Jury on the same morning and the defendant may well have derived from the circumstances an impression that the Assistant United States Attorney was pressed for time and that defendant would be expected to testify quickly.

The transcript of the Grand Jury testimony of the defendant is an accurate transcript of the questions asked of defendant and the answers he gave during his interrogation before the Grand Jury, The defendant was duly sworn by the foreman of the Grand Jury. The Assistant United States Attorney, after asking the defendant whether or not he was employed by the Town of Hempstead and ascertaining that he had for nearly two years been Deputy Commissioner

of the Department of Conservation and Waterways, advised the defendant that the Grand Jury was looking into allegations that Town of Hempstead employees had been coerced into giving portions of their salaries each year to the Republican Party. He was advised further that there had been "a fair amount of testimony" about the defendant's participation in the one percent scheme.

The Assistant then advised the defendant that he had a right to refuse to answer any questions the answers to which might tend to incriminate him, that anything he did say could be used against him in court at a later time, that he had a right to have an attorney of his choice to consult with outside the Grand Jury room, that he could consult with that attorney at any time by simply asking the foreman, and, finally, that if he could not afford counsel the court would provide him one. The defendant asked whether this was a routine statement. The Assistant answered that it was not, that, "[i]n all candor, ... if it is determined that there have been violations of the federal criminal statute, you might fit into the category as a defendant rather than a witness in that there has been testimony that you have participated in the one percent thing as it is called; that you have actively solicited employees possibly pressured them and indeed, given them

cards of some sort with one percent figures on them." (Tr. 3, lines 15 to 23). The Assistant explained that he did not say and it had not yet been determined whether or not such conduct was criminal but that he thought the defendant should know - and at that point the defendant interrupted. The defendant said that after Special Agent Walter Distler of the Federal Bureau of Investigation had telephoned him, he had telephoned to Republican Headquarters and confirmed that James Catterson was available as counsel.

Defendant then asked whether it was proper for Mr. Catterson to be in the jury room, saying

> "I mean you're putting it in a pretty grim light."

The Assistant United States Attorney explained that the law did not allow attorneys in the Grand Jury room but that at any point during the interrogation the witness could simply by asking go out and talk to his counsel privately. At that point the defendant stated that he did not think there would be any need for that, but

> "... what you just said is sort of scary."

The Assistant United States Attorney then pointed out that Mr. Catterson was outside, and that if defendant wanted to talk to him at once or any other time - but the defendant interrupted to say that he did not really think he wanted to.

Defendant was then asked whether he desired to waive his constitutional rights and to testify before the Grand Jury. Defendant answered that he would certainly testify and that no threat or promise had been made by the Assistant United States Attorney or anyone else.

Defendant's testimony on the topic of inquiry occupies about 12 pages in the transcript (Tr. 5, line 14 to Tr. 16, line 9). He was first asked whether he had heard anything to the effect that the Town employees were expected to give one percent of their salaries to the Republican Party each year. He answered

> "No other than in the newspapers for many years. ... Through the years, the various officials of the Party have openly admitted; its appeared in newspapers through the years, that many well, in our case since I think you can encompass more in the Town of Hempstead that many of the Town of Hempstead employees contribute and a figure is made in many cases about one percent."

His answer was somewhat further extended and he was then asked -

> "Q Did you hear anything to the effect that Town of Hempstead employees are expected to give one percent?
>
> A No. All I know is that I read in the paper. Specifically, nobody ever told me at any point that I must give one percent."

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Defendant's attention was drawn to the fact that his 1974 salary was recorded as $20,159 and that his Party contribution around election time was $202. He was then asked how he had arrived at that figure. After some further questioning about the amount of the salary and of the contribution the witness was again asked, "How did you arrive at the $202 figure?" And he said -

> "Okay I would pinpoint it this way. As I previously stated, I joined the Town of Hempstead in late September of 1966. At that time, my department was in its inception. It was just a nucleus being formed. It was a new and imaginative, way ahead of its time concept in environmental protection."

At that point the Assistant United States Attorney interrupted the witness and said -

> "As you can see, I'm obliging you at your request here, as you can see. There's a hallway full of people out there that we are trying to get out of here by lunchtime. And if we can stick to the question, we'll be a lot better off."

The Assistant then returned to the questioning and said

> "Q You sat down in 1974 and you made out a check for $202.
>
> A Right. Good. You asked me --
>
> Q How did you arrive at this figure?
>
> A Perhaps I've been too wordy but I tried to explain it. In any event in mid-October

at that time having a small office, you know, just several people, I heard Yolanda Rider Speranza ..., Carl Lebek -- ... Thomas Laurencelle ... And Gino Aiello. .... They were all sitting around in a bull session discussing the fact that they received, I believe, a campaign finance letter and that they were all going to contribute one percent. One of the four, I do not recall which of the four, said to me 'you ought to contribute one percent too.'

"Q What year was this?

A This was 1966.

The defendant explained that in that year, having been unemployed for a year before he hired on, he had made only a token contribution but that in the ensuing years he had made a one percent contribution "just like every body else."

Defendant was then asked the first of the questions quoted in the indictment (Tr. 9, line 7).

"Q All right. Now, did you play any role within your department in actively soliciting these contributions from employees under you at any time?"

The defendant's answer in substance was that he acted in each and every year after 1966 as the transmitter of contributions, but would not have been so presumptuous as to say to anyone "you should give one percent." He said, indeed, that when his secretary asked him what everyone was talking about with reference to one percent, he told her that she would have "to get that information from somebody else." He

continued -

> "In other words, feeling in my position, that I should not be the originator of such a thing."

The Assistant United States Attorney then said,

> "Q All right. Let me ask you this then.
>
> A Incidentally I do not wish to commit perjury. There is a little more to that.
>
> Q All right. Hold on.
>
> A I don't want to commit perjury."

The Assistant United States Attorney then asked the second question quoted in the indictment -

> "Q A number of employees have testified that you would come around and give them a three-by-five or a similar card on which it would have their name, their salary, and a handwritten notation somewhere on the card which was a figure representing one percent of their salary. Now, first of all, has that occurred?"

The defendant answered that cards showing the employees names and salaries were indeed prepared, but the substance of his testimony was that this was done as a convenience to employees who wanted to know what their salaries were so that they, acting on their own initiative, could figure one percent on their salary. Speaking of department employees who were not in the main office where defendant was stationed but at scattered locations, the defendant said "I rarely see

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them. I have no direct communication with them. I have never solicited them. Okay?" He explained that at times he gave such 3 x 5 cards as were referred to in the question to supervisors for distribution to the men working under their direction at locations outside the main office. He said in this connection that he had received so many requests for salary data that

> "...I did give some to some supervisors with these instructions, so help me God! 'You have this. You've been asking for it for some. There's gonna be more. I'm too busy preparing a budget. They are only to be given to a man if he asks you a question which specifically can be answered by you.' And there was no one percent figure on those cards."

The indictment charged that the quoted testimony of the defendant, as he then well knew and believed, was not true in that

> "... he had suggested to Town of Hempstead employees that they should give a portion of their annual salaries to the Republican Finance Committee, and he had approached Town employees to solicit such contributions."

The Government's evidence at the trial established beyond a reasonable doubt that the defendant both had solicited, on behalf of the Town of Hempstead Republican Finance Committee, contributions equal to one percent of

annual compensation and had suggested to Town of Hempstead employees that they give one percent of their annual compensation to the Republican Finance Committee of the Town of Hempstead. The evidence of the witnesses was that in August or September of each recent year before 1975 the defendant would remind them that one percent time was at hand, and that he would do this without being asked by employees whether or not they were expected to contribute or whether or not it was time to make a contribution to the Republican Finance Committee.

The defendant, in the case of employees within the headquarters office of the department, personally approached employees and received checks from them. In the case of employees not working in the main office or headquarters, defendant would advise their respective supervisors that it was time for the employees under their supervisinn to be reminded that it was the time of year to make a one percent contribution. Defendant supplied to the supervisory employees lists of the employees in their locations with their annual salaries, and the evidence was that departmental employees in places outside the main office who failed to make contributions, or who had some reason for not being able to do so, were told to take the matter up with defendant.

The evidence was, and it is credible, that defendant did cause cards to be prepared for the departmental employees, each card showing the name of the employee and his annual salary, and that the cards in at least one year also had the one percent amount computed on the card. There was no evidence that the supervisory employees or any other employees had taken the initiative and had themselves asked defendant either for lists or for cards in order to serve as a convenience to those who might not recall the exact amount of their compensation (inclusive of overtime).

There was considerable credible evidence that defendant did not advise certain employees that contribution was mandatory, or say to them that a failure to contribute could affect either their hiring by the Town, their promotion, their receiving overtime, or any other expectable employment advantage that discretionary authority could deny to them. However, there was also credible evidence that defendant told one employee who had failed to make a contribution that he would not receive overtime because of his failure to make a contribution. The employee in question took the matter up with defendant's superior, Commissioner Udell, who cancelled the prohibition of overtime; it appears that the employee lost not more than one Saturday morning's overtime. There was credible evidence also that defendant

gave another employee to understand that if he wished to be reclassified to a certain advantageous compensation basis he would be expected to make a contribution. The employee then tendered a $75 money order to defendant which defendant first rejected but later accepted. After a considerable lapse of time the employee did receive the desired classification. When "one percent time" arrived later in the same year the employee contributed, in addition to the $75 already contributed, approximately one percent of his annual pay.

The evidence supports beyond a reasonable doubt the inference that defendant did advise employees to make contributions equal to one percent of their annual salary rounded to the nearest full dollar. In the case of one employee who had been solicited through her supervisor to make a one percent contribution, the employee, opposed to being expected to make any contribution at all, drew a check in an amount equal to exactly one percent of her annual salary - $81.67. After a lapse of two weeks defendant returned the check to her and told her to write a new check rounding the amount off; thereupon the employee did write and give to the defendant an $82 check.

The evidence in the case thus leaves no escape from the conclusion that the defendant was an active participant

in the solicitation of one percent contributions from Town employees and in suggesting to them that their contributions should be a portion, that is, one percent, of their annual compensation. The solicitation and suggestion was made directly to main office employees, and was made indirectly, through supervisors, to employees at locations outside the main or headquarters office.

Defendant contends that he was not given an opportunity to complete his answers but was hurried and interrupted before he had completed his answers to the questions quoted in the indictment. He contends that the answers that he gave are, upon analysis, seen to be so unresponsive and inexact that they could not form the basis of an indictment under 18 U.S.C. 1623 in the light of Bronston v. United States, 1973, 409 U.S. 352.

The circumstances of defendant's testifying before the Grand Jury bear directly on this question.

On June 11, 1975, one month before defendant testified before the Grand Jury he was interviewed by Special Agent Walter E. Distler of the Federal Bureau of Investigation. Mr. Distler credibly testified as follows:

"Q Can you recall what if anything you and Mr. Graber discussed concerning employee contributions within his department?

A Yes, I asked him if he knew anything about the one percent. He indicated that he did and I believe he said he heard about it through scuttlebut from employees in the office.

He further indicated to me that when he first became employed with the Department of Conservation and Waterways he was requested by the Commissioner to act as a collector for any contributions that might be given by employees of that department.

Q Did you ask him whether or not he had anything to do with the soliciting of those contributions?

A Yes, I believe he did.

Q What if anything did Mr. Graber say?

A Mr. Graber said he had nothing to do with the soliciting of the contributions, but then he indicated to me that he did act as a collecting point for the contributions.

Q Did you ask Mr. Graber whether or not he had ever solicited contributions for the Republican Party?

A Yes, I believe I did and he indicated to me that as a member of the West Hempstead Republic Club which he said was a social organization he did on possibly one or two occasions go door to door soliciting contributions for the Republican Party.

Q Did you ask him after he said that or did it ever come up whether or not he had ever solicited contributions from employees of the Town of Hempstead?

A Yes, I think he ended that by saying that he never solicited contributions from the employees of the Town of Hempstead."

On cross-examination he was asked and answered the following questions:

"Q When you get into this word "soliciting," what did you intend by that word?

A Did he actually go to various employees and ask for contributions.

Q He told you "No"?

A That's right.

Q Mr. Distler, he did tell you, though, did he not, that he would have other people that were employed by the Town go out and ask for contributions?

A Not to my knowledge he didn't.

Q Did you ask him if he did?

A No, I did not."

Later in his cross-examination Mr. Distler testified:

"In your interview, did you ever ask Mr. Graber whether or not he suggested to Town of Hempstead employees that they should give a portion of their annual salaries to the Republican Finance Committee?

A No.

Q Did you ever in your interview with Mr. Graber ask him whether or not he had approached Town employees to solicit such contributions?

A No, I didn't."

In the context of the last two questions and answers the witness's answers appears to be directed to the precise verbs used - "suggested" and "approached." The witness's answers were not intended to withdraw the substance of what he had said in his direct testimony quoted above.

Defendant himself testified about his interview with Mr. Distler and the central point of his testimony was that Mr. Distler had not asked him whether he "solicited" contributions but had only asked him whether or not he had "collected" contributions. Defendant said in part

> "A The only word he used was "collect." I remember that. "Did you collect" and in order to answer him I had to define it. I said, "Mr. Disler, can you define what you mean by that? Do you mean if I actually solicited donations from individuals in my department, like one would if he went from doorbell to doorbell to doorbell in his neighborhood," meaning to each and every or virtually each and every person. Mr. Disler says "Yes, that's what I mean," and of course to that type of solicitation the answer is no and this is what I so told Mr. Disler, to that type of each and every or virtually each and every person like you do when you go down the block ringing doorbells. I have this "doorbells" and it's also in my second discussion with Mr. Disler via telephone because then we have a somewhat different version on the second -- when he called me and said that unlike the other departments --
>
> Q I must ask you --
>
> A I'll stop there. Okay.

In that frame of reference, my answer, after I got Mr. Disler to qualify what he meant by collect, the answer was then no.

Q You admitted to Agent Disler then that you in fact did solicit employees, co-employees, but not directly?

MR. SUTTER: Objection.

THE COURT: On what ground?

MR. SUTTER: On the basis --

THE COURT: You're arguing with him because of the word "then" in the question?

MR. SUTTER: Not only that, your Honor, but that's not the testimony of this witness.

THE COURT: I'll sustain the objection to the form of the question.

MR. SUTTER: Thank you, sir.

Q Did you tell Agent Disler that you solicited employee contributions?

A He never asked me.

Q Never asked you?

A Other than what he said, "Do you collect," I asked for a definition. By definition, going down the block, doorbell by doorbell. He said, "Yes, that's what I mean." I said, "The answer is no," and then his next question -- I may have the order wrong, you know. I don't know which order, but my notes "When you're hired by the Department of Conservation Waterways, did Francis D. Purcell tell you about one percent?" I said unequivocally, "No."

Shown Special Agent Distler's memorandum of the June 11th interview (dictated from his now destroyed notes by Mr. Distler on June 17th, six days after the interview), defendant in substance said that the memorandum did not refresh his recollection of the conference and that he disputed its correctness. He then was asked and answered:

> "Q What you dispute is you being attributed as having said during the course of that interview that you had absolutely nothing to do with soliciting these contributions and that you had merely acted as a collecting point for any contribution employees may desire to give. Is that what you dispute you didn't say that?
>
> A Either soliciting or collecting, either."

The witness had his own "debriefing" notes of the interview which he had made on the day of the interview, and when he was asked whether another part of Mr. Distler's memorandum refreshed his recollection he referred to his own debriefing note and then answered:

> "A This was written the same time. I have no recollection of that time nor the debriefing which I made immediately of the word "solicitation" ever being used or anything other than that --
>
> * * *
>
> Q You do not recall repeating to him a second time during the course of the interview that you had never solicited contributions from employees of the Town of Hempstead?
>
> A I say on the first interview he didn't ask me that."

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Defendant was amply forwarned of the questions which he was likely to be asked when he appeared before the Grand Jury. There is no real disparity between what he said to Mr. Distler and his Grand Jury testimony. Nor is there any significant disparity between his reconstruction at trial of discussion of the Distler interview and the approach to the subject of the so-called one percent system which he took in testifying before the Grand Jury.

Defendant testified that he had heard of the United States Attorney's investigation early in the year and had talked about it with his superior, Commissioner Udell, before going into the Grand Jury. He further testified that Commissioner Udell had told defendant that Udell could not get himself involved, that the Commissioner could not admit that he had assigned the defendant to the matter each year and that Udell told the defendant in essence that he would be on his own. Defendant testified that Commissioner Udell had not wanted the defendant to refresh his (Udell's) recollection, that on the contrary, Udell wanted to cut off his talk with defendant altogether. Defendant said that this preyed on his mind. He was also concerned about what Commissioner Udell had said about Yolanda Speranza, Udell's secretary - or what a Gino Aiello had said - to the general

effect that defendant had twisted Yolanda Speranza's arm. He was concerned also about Udell's statement that one John Zuretsky "could hang us all." Defendant had earlier heard that before he (defendant) had been employed by the Town of Hempstead, Zuretsky had been denied a promotion because he had not made a contribution. Apparently at some point Commissioner Udell had allegedly designated defendant to remind Zuretsky to make contributions in future years. Defendant testified that when he was told in the Grand Jury that he was potentially a defendant he had an impression that all of this was connected with Commissioner Udell's intrigue and the Commissioner's own earlier appearance before the Grand Jury.

Defendant testified that he had consulted with Mr. Catterson before testifying, and that Catterson had tried to give him an insight into Grand Jury functions and how to answer questions and had spotted a couple of things for him. Defendant said that Mr. Catterson had told him that it would be good to include in his testimony something in praise of his department. Defendant told the Grand Jury, referring to the year 1966,

> "At that time, my department was in its inception. It was just a nucleus being formed. It was a new and imaginative, way ahead of its time concept in environmental protection."

Defendant said that Mr. Catterson had also told him that before he explained something he should use an expression, "I don't want to be hairy about this." Before the Grand Jury defendant did say in answer to the solicitation question: "I don't want to be hairy about it."

Defendant testified that he was treated roughly in the Grand Jury room, that he was questioned in an accusatory manner, and that he was not permitted to complete certain of his answers. Defendant said that he got in touch with the United States Attorney's office right after he had testified and advised them that he felt that his testimony was incomplete because he was rushed, and he asked to have the Assistant United States Attorney recall him as a witness. He later consulted Mr. Catterson, who, he testified, told him that he had a problem with the United States Attorney's office and should go to see them. He went then to the FBI and an FBI man took him in to see the Assistant United States Attorney. The Assistant United States Attorney suggested to defendant that he retain an attorney and return. Defendant did retain an attorney and returned with him to see the Assistant United States Attorney. Defendant's attorney went over the Grand Jury testimony, and in the end, after the Assistant United States Attorney had

suggested that defendant go into the Grand Jury again, defendant's attorney advised the Assistant United States Attorney in defendant's presence that he did not see perjury in the transcript and therefore was advising the defendant not to go back on the witness stand. Defendant accepted that advice.

At the trial defendant was asked on cross-examination, with reference to the visit to the Assistant United States Attorney, which took place on August 8, 1975, whether he had not stated to the Assistant that the testimony he had previously furnished to the Grand Jury on July 11, 1975, was true and correct. The defendant was unable to answer that question from his recollection but answered

> "Seeing my Grand Jury notes, I would say my Grand Jury notes are true, my Grand Jury testimony is true."

On re-direct examination the defendant in substance testified that he did tell supervisors to go about and see if they could get political contributions for the Republican Party, that he solicited many people for contributions and that he did this at the direction of the Commissioner.

Taking into account all of the evidence both relating to the period before his Grand Jury testimony and

after it, as well as defendant's testimony at the trial, it is concluded that the defendant was not prevented from continuing his testimony before the Grand Jury in any manner that was improper or that resulted in the defendant's failing to convey his complete response to the questions asked. While the answers that he gave were discursive in the extreme, they dealt directly with the questions asked. In each case the answers produced, and were intended to produce, the impression that the defendant was not active in the solicitation of one percent contributions from employees of the Town of Hempstead, but was merely one who stood passively ready to transmit contributions voluntarily offered to him for transmittal to either Commissioner Udell or to the Republican Finance Committee of the Town of Hempstead. So far as the furnishing of cards was concerned, defendant's position was made perfectly clear and was completely described; he testified before the Grand Jury that he did not prepare cards as an integral part of the system of soliciting campaign contributions, but, rather, had cards prepared in response only to requests for salary data addressed to him and as a convenience to those employees who either directly or through their supervisors sought, or were expected to seek, information about their salaries, so that they could better compute their voluntary one

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percent contributions. The defendant has not indicated either during trial or at or after he testified before the Grand Jury what additional testimony he had intended to proffer to the Grand Jury, and how it would have modified the effect of the testimony that he did give.

The suggestion has been that Bronston requires an inquiring attorney to pursue an evasive witness until his answer is explicitly responsive to the question asked. The defect of the questioning in Bronston was that the witness had very plainly not answered the second question in the sequence; he had answered a question that had not been asked, and the volunteered statement did not imply a response directed to the substance of the question asked. The first question had been whether Bronston had any bank accounts in Swiss banks at the time he was being questioned; he answered "No." The next question was "Have you ever had any Swiss bank accounts?" His answer was that his company had maintained such an account there for about six months, in Zurich. He then was asked whether any of his nominees either currently had or had ever had Swiss accounts and he answered "No." In fact Bronston had maintained a Swiss bank account which may well have continued in existence up to a date relevant to the inquiry. In Bronston

the second answer did not amount to saying, "No, I never had such an account, but my company did." It was consistent with an answer, "Yes, both I and even my company have had accounts in Switzerland." Hence the Court concluded that the answer could not be the foundation for a charge of perjury, saying (409 U.S. at 362)

> " . . . we are constrained to agree with Judge Lumbard, who dissented from the judgment of the Court of Appeals, that any special problems arising from the literally true but unresponsive answer are to be remedied through the 'questioner's acuity' and not by a federal perjury prosecution."

In the present case, in contrast, the defendant's answers, while discursive and circumstantial, were precisely responsive. They depicted his role; they conveyed very complete answers to the questions asked. The answers he gave could not have been deprived of their content as responsive and untrue by any words that the defendant could have added to them short of total and explicit recantation before the Grand Jury of the substance of the answers given.

Defendant gave evidence that as a result of his military service he had a service-connected disability affecting his mental condition, and it could be inferred from his courtroom performance that he is what is thought

of an temperamentally high strung. However, neither the text of his Grand Jury testimony, nor his statements and testimony in court, afford ground for inferring that he failed in self-possession either before the Grand Jury or in court. The inference is that in each place he was able to say what he intended to say.

GENERAL FINDING

It is found that the defendant is guilty as charged.

Dated: Brooklyn, New York
October 1976.

U. S. D. J.

MOTION FOR A NEW TRIAL (Filed December 6, 1976)
(pp. 419a-471a)

UNITED STATES DISTRICT COURT
EASTERN DISTRICT OF NEW YORK
- -X

UNITED STATES OF AMERICA,

- against - 76 CR 166

RAYMOND GRABER,

Defendant.

- -X

S I R :

PLEASE TAKE NOTICE that upon the annexed affidavits of Nancy E. Graber, Lance J. Graber, Raymond W. Graber, Jr., sworn to November 29, 1976, the affidavit of Eileen Graber, sworn to December 1st, 1976 and the affidavit of Raymond Graber, sworn to December 2nd, 1976 and the memorandum annexed, and pursuant to Rule 33 of the Rules of Criminal Procedure, a motion will be made before the Honorable John F. Dooling, Jr., of this Court at the United States Courthouse located at 900 Ellison Avenue, Westbury, New York, on the 10th day of December, 1976, at 10 o'clock in the forenoon of said date, for an order (1) setting aside the verdict and granting a new trial; (2) vacating and setting aside a waiver of jury trial executed by defendant on September 7, 1976; (3) disqualifying said Hon. John F. Dooling, Jr., from further proceedings herein; and (4) for such other, further and different relief as to the Court seems just and proper.

Dated, Huntington, New York
December 3 1976

Yours etc.,

RICHARD C. CAHN
CAHN AND CAHN, ESQS.
Attorneys for Defendant
Office and P.O. Address
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TO:

HON. DAVID G. TRAGER
United States Attorney
By: JOHN CADEN, ESQ.
Assistant U.S. Attorney
U.S. Courthouse
225 Cadman Plaza East
Brooklyn, New York

UNITED STATES DISTRICT COURT
EASTERN DISTRICT OF NEW YORK
- X

UNITED STATES OF AMERICA,

- against -

RAYMOND GRABER,

Defendant.

76 CR 166

- X

STATE OF NEW YORK
SS:
COUNTY OF SUFFOLK

RAYMOND GRABER, being duly sworn, deposes and says:

1. I am the defendant. I make this affidavit pursuant to Rule 33 of the Rules of Criminal Procedure to set aside the verdict and for a new trial. I also ask that the waiver of trial by jury executed by me September 7th, 1976, be set aside and that the new trial be by jury. I also respectfully ask that the learned District Judge before whom this case is pending disqualify himself from further proceedings herein and that upon the new trial the matter be assigned to another Judge.

2. The principal ground upon which this motion is made is that I was deprived of effective assistance of counsel for my defense in violation of my Sixth Amendment rights. In part, the motion is based upon totally inadequate preparation for trial by my former attorney. In part, it is based upon a large number of scandalous and shocking statements made by my trial counsel to the Trial Court during the course of this bench trial, some of them made in my absence from court and others made at a side bar conference out of my hearing, which, taken individually and collectively, created an ineradicable impression in the mind of the trier of the fact that I totally lacked credibility and responsibility. These comments indicated a desire on the part of my counsel to create a cozy aura of collegiality

among adversary counsel and the court, at my expense. I respectfully submit that the statements of my counsel so shock the conscience as to make the proceedings a farce and mockery of justice.

3. Prior to the trial I was arrested on a warrant issued in part as a result of representations made to the court by my attorney in my absence that he had "ordered" me to appear in court on a particular day, but that I had insisted upon travelling to Ithaca, New York, in defiance of my obligation to the court. Any such representation was and is false, and the issuance of the arrest warrant at the virtual invitation of my counsel created before the first witness had ever been called a climate in this court in which I could not receive a fair trial - certainly not while represented by my then attorney.

4. To the extent that this motion is based upon the inadequacy or non-existence of trial preparation, the Court was advised prior to the opening of the trial of my deep and anxious concern. To the extent that this motion is based upon comments of my trial counsel made in my absence or out of my hearing at side bar, I have just learned of these comments by reading the transcripts of the various dates when my matter appeared on this Court's calendar. Except for the transcript of the trial itself, which was turned over to me by my trial counsel at the time he withdrew from his representation of me on November 5, 1976, the transcripts had to be ordered by my new counsel. It was not until November 29th, 1976, that I read the transcript of the proceedings before the Court held August 31, 1976 in my absence and learned that my counsel had virtually invited issuance of an arrest warrant for me while he then well knew exactly where I was because he, himself, had suggested that I leave my itinerary with his secretary, and I had done so.

5. I continually over a period of months from the time of my arraignment, March 18th, 1976, until August 30, 1976, attempted to confer with my trial attorney, Jr. John Sutter. On only two occasions, to the best of my recollection, each of approximately 15 minutes duration, did I personally confer with him during that entire period of time. On the afternoon of August 30th, 1976, I had a third brief conference with my attorney which lasted no more than 10 or 12 minutes. Thus, up the time of trial I had had no more than 45 minutes in total attorney-client consultation time.

6. During this period because there was no communication with my trial attorney, and he did not respond to my letters and phone calls, I took the initiative and visited his office on many occasions. On approximately six occasions James Frazer, a law clerk employed by Mr. Sutter, reluctantly talked to me, sometimes in the reception room only. We spent virtually no time discussing substance or case preparation. The total time involved in these unproductive sessions with Mr. Frazer was, to the best of my recollection approximately three hours.

7. As time elapsed following my arraignment, I became increasingly concerned with the lack of meaningful contact with my attorney. I wrote four letters to Mr. Sutter and one to his law clerk. These letters were respectively dated as follows: (to Sutter) May 24, June 9, July 16 and August 27, 1976; (to Frazer) August 17, 1976. I advised the Court on September 2, 1976 of the four letters to Mr. Sutter and read excerpts therefrom into the record (pages 6-8), copies are annexed.

8. I specifically wished my attorney to subpoena certain documents from the Town of Hempstead, Department of Conservation and Waterways; and to subpoena as defense witnesses Patrick Mulholland. Karl Wendt, Wilbur Ballman, Anthony Artusa and other

employees of the Department of Conservation and Waterways. I was assured at the conference held September 2nd in the side room adjacent to the Westbury courtroom that my trial counsel would subpoena these documents and call the defense witnesses whom I suggested. It was in reliance upon my attorney's representation that he would call such witnesses and subpoena such documents that I consented to proceed with him as my counsel on September 2, 1976.

9. Had I known that my attorney would in fact call none of these witnesses and subpoena none of these documents, I most certainly would not have agreed to continue with him as my attorney for the purposes of this trial.

10. Based upon my prior conversations with these employees who are all employees of the Department by which I am employed, I believe that if called, Patrick Mulholland, Supervisor of Waterway would have testified that I never solicited him, never gave index cards to him, I never mentioned 1% to him and that he had previously told the Assistant United States Attorney, John Caden, that he had merely gone to me for pay roll information and told Mr. Caden, "Where else would you go for pay roll information?". Anthony Artusa, Labor Foreman II, would have testified that as an employee situated at the Department's headquarters building, he had not learned about 1% from me, was never solicited by me, never received a solicitation 3 x 5 index card, never observed me soliciting any employee and he so told Mr. Caden.[1] Wilbur Ballma Waterways Inspector II, would have testified that in the early years he came to me and asked for pay roll data to compute 1% and that I had specifically said to him at that time that he was not in any way to interpret my giving him that data as my soliciting

[1]Also, Karl Wendt, Deckhand II, would have testified that Richard Harrington, one of the principal witnesses against me, demanded 1% from him in the first year of his employment, that Wendt was incensed and went to me to complain, telling me that Harrington had said, "You owe us 1%"; and that I had responded, "You don't owe us a thing."

him.

11. Karl Wendt and Patrick Mulholland called Mr. Sutter's office during the trial to offer to testify and never received a return call. I gave Mr. Sutter or Mr. Frazer the other names, including a number of other names not specifically mentioned in this affidavit. I specifically told Mr. Sutter before the trial that there had been a Department luncheon on or about March 31, 1976, shortly after my indictment had become public. This was a luncheon for Jessie Conrad who was retiring as Labor Foreman II. The luncheon was held at the Deep Sixes in Island Park and approximately 60 people, mostly employees of the Department, attended. A large number of people came up to me enmasse and told me such things as "You got a bum deal", and "You've never solicited me", and "I'll testify for you". Wilbur Ballman was one such person, Tom Rocca was another.

12. Another witness whose name was made known to Mr. Sutter, was Frank Kilgannon, my lawyer during the summer of 1974. He and I went to see Assistant United States Attorney James Druker in Brooklyn in August of that year to read my grand jury testimony. I brought in a list of supervisors to Mr. Druker and was otherwise cooperative. There were conversations participated in by Mr. Kilgannon and Mr. Druker which would have been valuable to the defense in demonstrating my cooperative attitude toward the investigation.

13. Specifically, Mr. Kilgannon's testimony would have been of value in discrediting Yolanda Speranza[2] and Thomas Doheny, two prosecution witnesses. These witnesses contributed to the Republican Party before 1969 and their testimony referred to the pre-1969 period. In August 1974, Assistant United States Attorney Druker advised Mr. Kilgannon, my then lawyer, that the

[2]Speranza could have been discredited further by showing from the personnel and political records (the latter of the Republican Party) and by testimony of department employees that she joined the Town's employ and contributed 1% before I ever became employed.

government was not interested in any soliciting done by anyone prior to 1969 and also that the government was not interested in anyone who solicited only a few people.

14. Mr. Kilgannon's testimony would have been relevant because in testifying before the grand jury, I attempted to answer with respect to the period since 1969[3].

15. Another witness who could have been called was Gino Setti, a mechanic. He called me at home after my indictment and stated that since he had started work in 1974, I had never discussed political contributions with him although I was the one who had gotten him his job. He could also have testified that I did not visit or solicit in "hinterland" buildings.

16. The existence and identity of all of these witnesses was known to Mr. Sutter before the trial as was the substance of their proposed testimony and my desire to call them, yet he called none.

17. A witness who testified against me was Frank Guma. He had a prior disciplinary record with the Department of Conservation and Waterways and his personnel record undoubtedly shows not only his disciplinary problems but also the fact that the dates of his promotions are far removed in time from the dates of his Republican Party contributions. Joseph Duncan and possibly another witness were available to refute in whole or part the testimony of Frank Guma.

18. My Veterans Administration medical report showed the severe emotional problems which I have suffered since World War II. Mr. Sutter was made aware of my medical history and of the fact

[3] At page 11 of the grand jury minutes the expression "1975 through 1974" appears as part of one of my answers, it should read "1969 through 1974". Mr. Kilgannon's testimony as to Mr. Druker's statements relative to the scope of the investigation would have breathed life into my complaints that the grand jury testimony was not accurate. Instead Mr. Sutter went out of his way at pages 14-15 to minimize any complaints that I had voiced relative to the accuracy of the grand jury transcript.

that the Veterans Administration possessed substantial records relative to the same, yet never subpoenaed these records.

19. It was brought to Mr. Sutter's attention that Michael Foley, a Conservation Department biologist, had witnessed Thomas Doheny jumping for joy after my indictment had been made public, saying, "Now I'll get his job".

20. There was a confidential file in the Department office relative to Caroll Parker, the existence of which was made known to Mr. Sutter.

21. John Lagomarsino testified that overtime pay opportunity in the Department was limited to a small amount. The pay roll records belie this and show substantial overtime on Lagomarsino's part, and should have been subpoenaed. These records would also show that, contrary to Lagomarsino's testimony, Mr. John Ackerman was not removed from overtime.

22. In short, there were a large number of witnesses who could have been called for the purpose of corroborating my testimony as to the nature of my role realtive to the transmittal of political contributions to the Republican Party; and these and others could have been called and documents subpoenaed for the purpose of severely discrediting the prosecution witnesses who testified against me.

23. As the Court knows, no defense witnesses were called.

Effectiveness of Counsel: Undivided Loyalty; Meaningful Representation; Ability To Communicate With The Client.

24. As early as August 31, 1976, there were a number of incidents which occurred in the presence of the Court, which made it clear, or should have made it clear, that there was grave difficulty between my trial counsel and myself; that I was completely dissatisfied with the preparation that he had made for the trial; and that there was beginning to be obvious a serious question about my attorney's undivided loyalty to his client.

25. Now that I have seen the transcript of August 31, 1976, I begin this section of my affidavit with an analysis of the proceedings which took place in my absence that date.

25. On page 3, Mr. Sutter stated to the Court,

> "Mr. Frazer of my firm is the man who is preparing this case, and he has had extreme difficulty in communicating with this particular defendant."

It was not until September 2nd, that Mr. Sutter advised the Court (page 20) that Mr. Frazer was not an attorney, but rather a "Registered law clerk", which probably means that Mr. Frazer does not attend and has not attended law school, but is apparently learning the practice of the law exclusively through clinical exposure. Mr. Sutter continued on August 31st, significantly under the circumstances,

> "Not that the defendant is not responsive to the demands that he appear in our office....".

The truth of the matter is that I always appeared at Mr. Sutter's office whenever asked to do so and very often appeared and waited for hours in the waiting room in vain to confer with Mr. Sutter.

27. On page 3 of the August 31st transcript, Mr. Sutter advised the Court that the previous afternoon, "I advised the defendant that he must appear in court today". This is not true. Mr. Sutter knew that I had been concerned for virtually the entire month of August about the problem of transporting my son, Douglas, to Ithaca, New York, to commence his second year at Cornell University. I specifically asked Mr. Sutter on August 30th, if we would go to trial and if it was still alright for me to go to Ithaca the next morning. He specifically told me that I should go,

> "and give my regards to Cayuga's waters",

but that I should leave my itinerary with his secretary, Barbara. I did so and indeed on page 4 of August 31st, Mr. Sutter advised the Court that I was staying "at a place called the Sheraton".

Actually, I was at the Sheraton Motor Inn.

28. On page 4 of August 31st transcript, Mr. Sutter quoted himself as telling me the prior afternoon, "I am directing you to appear in court today". This is not true. He specifically told me that the August 20th letter of Dr. Stefano would suffice in lieu of my appearance on the 31st. If I was always "responsive to the demands" that I appear in Mr. Sutter's office, how could it possibly be inferred that I would not be responsive to an obligation to appear before this Court?

29. At page 5, Mr. Sutter described me as a man who "is obviously trying to avoid the due processes of the law". At page 5, he told the Court that I allegedly have a secretary who is a former law secretary who "second guesses" Mr. Sutter on defense strategy.[4] He stated that I believed my secretary to know more about criminal defense that did Mr. Sutter. At pages 6-7, Mr. Sutter told the Court,

> "I don't think he's a nut and you can put that in quotes, please, but he certainly does have hang-ups".

At page 8, Mr. Caden, the Assistant United States Attorney, stated,

> "It distresses me what Mr. Graber did".

Mr. Sutter then responded, "It disturbs me too". Mr. Caden rejoined, "I am not saying it doesn't disturb you Mr. Sutter."

30. The Court at page 9, obviously convinced that I had wilfully defied my attorney's instructions to appear in Court and hearing nothing from my attorney to contradict this impression, stated at page 9,

> "What are we going to do at this point. It's easy enough to get the Marshal in the Northern District to fetch him in, no problem with that, it can be done by telephone. We can teach him

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[4] My secretary has never discussed the details of this case with me.

> a lesson, but is that the way to start the case?"

Further the Court stated, "The only argument that's made for that [that I am allegedly a "strong defendant"] is that the man is a neurotic and maybe the whole world has to bend around people. I don't like it. Nobody likes it. I have often thought that maybe all of us ought to have a few roads in reserve that we can explore on occasions of difficulty and impasse and make life very easy for us all."

31. At page 10, Mr. Sutter chimed in,

> "Judge, if I may as a layman I believe he is a genuine neurotic but he is not a psychotic".

Later Mr. Sutter said,

> "I must say I apologize again on behalf of my client. I don't like it either because I had to appear here and I drove from Mineola with this."

32. At pages 10-11, Mr. Caden, after conferring with the

United States Attorney and his chief assistant and several other people in his office, reported to the Court that I

> "intended to take a vacation, and ... did not intend to appear here for trial, and he put his personal plans above being tried here. As a result I have also been advised that within the last six months, Mr. Graber has never taken a sick day and his attendance has at all times been good. Also Mr. Sutter has been kind enough to advise me when Mr. Sutter asked him to come to his office he never missed. Having advised the U.S. Attorney of all that I feel constrained to know that on Thursday morning at 10:00 A.M., that the defendant is in fact where he is supposed to be which I gather is the United States District Court located now in Westbury. My proposal is, I make an application for a bench warrant now, but the execution to be stayed until 10 o'clock A.M. tomorrow morning with the understanding that Mr. Sutter advise Mr. Graber that there is a bench warrant outstanding and that we would like to know and we would like to have him back in Westbury at home by 10 o'clock A.M., tomorrow morning. This would be the understanding as I see it, that we can try this case as expeditiously as possible because I fear from what I heard Mr. Graber may not be back on Thursday and this particular fruitless meeting we have will repeat itself Thursday morning in Westbury ...."

33. At pages 12-13, Mr. Sutter attempted to suggest another alternative to the Court, namely, that I be advised to return to Mr. Sutter's office "by no later than 4 o'clock on Wednesday so we can commence Thursday".

34. The Court then significantly said,

> "Well, I don't see how you can get anywhere with Mr. Graber unless you were able to tell him there is a warrant out for him."

35. Mr. Sutter said,

"I intend to tell him that, Judge".

36. In point of fact, Mr. Sutter never at any time told me there was a warrant out for my arrest. Mr. Frazer called me in my motel room at 12:30 A.M., September 1, and advised me to telephone Mr. Sutter at precisely 10:30 A.M., that same day (September 1) and to be back in Mr. Sutter's office at 4:00 P.M. that day. At no time did Mr. Frazer tell me or even imply that

there was a warrant out for my arrest if I did not return to Court by 10 o'clock the next morning. It appears that Mr. Frazer simply relayed to me the suggestion that Mr. Sutter made to the Court, but which was not accepted by the Court (see page 14, August 31 transcript). Mr. Sutter clearly understood the arrangements that the Court made by saying at page 14,

"Judge, I understand that."

37. At page 15, it appears that Mr. Sutter began to make comments to the Court designed to assure the Court that he, Mr. Sutter, was blameless in the situation:

> "Judge, may I say this: I had no alternative other than to come in this morning and tell your Honor exactly what happened."

The Judge thereupon pointed out that the trial could not commence without my presence and significantly stated (following Mr. Sutter's lead and accepting at face value his comments relative to my alleged refusal to appear),

> "Willful non-attendance at trial should not be any different than willful absenting oneself from the trial after it has been started."

38. At page 15, Mr. Caden stated his understanding of the arrangements that I was to be contacted by Mr. Sutter, specifically advised prior to 10 o'clock the next day to be in Mr. Sutter's office by 4 o'clock tomorrow afternoon and that if I did not agree to be present at that time, that a bench warrant will execute as of 10 o'clock September 1st (pages 15-16). This clearly left the burden upon Mr. Sutter to advise me fully of the circumstances and then to report back to the Court and/or Mr. Caden as to my agreement or non-agreement to be present at his office.

39. As previously noted, I at no time was advised of the arrest warrant. I was asked to call Mr. Sutter at 10:30, September 1 and to be in his office at 4:00 P.M. on the same date.

In the middle of the night conversation with Mr. Frazer, I advised him that of course I would comply with his instructions. 433a

40. The next morning while en route from Ithaca to Long Island, I stopped at Roscoe, New York, to make the telephone call to Mr. Sutter's office. I arrived at a public telephone at 10:25 A.M., waited five minutes and then at precisely 10:30, placed the call to Mr. Sutter (please note that I was asked to call at 10:30, not before 10 o'clock). No one in Mr. Sutter's office knew why I had been asked to call and neither Mr. Sutter nor Mr. Frazer were present. I thereupon left a message with Mr. Sutter's office[5] that I would be in his office at 4:00 P.M. that date as I had told Mr. Frazer the night before.

41. I then proceeded back to Long Island by automobile and was arrested by United States Marshals at approximately 2:30 P.M., as I stepped out of my car in front of my house. I fully intended to be at Mr. Sutter's office at 4:00 P.M., that date, and had arrived back on Long Island in ample time to make that appointment.

42. Mr. Sutter apparently neither advised the Court nor Mr. Caden of the conversation that Mr. Frazer had had with me in the middle of the night, just as there had been a complete failure on Mr. Sutter's part to advise me of the arrest warrant in the 12:30 A.M. telephone conversation, September 1st.

43. Mr. Sutter had the home telephone numbers of both Mr. Caden (page 13) and the Judge (page 16). Mr. Caden was to advise the Court of the status of the case at 10 o'clock, September 1st (page 17) and I presume he did so advise the Court that no communication had been received from Mr. Sutter and that therefore the bench warrant should issue.[6]

44. All of the above is recited in some detail, in part because, the proceedings having taken place in my absence, I had

[5] With Dana Winslow, an attorney.

[6] See postscript, page 24

no knowledge prior to reading the transcript at my present attorney's office during the week of November 29th, of exactly what had transpired. I categorically deny having been directed by Mr. Sutter to appear. I categorically assert that he advised me to go to Cornell University and that in reliance upon his advice, I made the trip.

45. The significance of this episode is great. In the first place, it demonstrates the total lack of communication on the part of Mr. Sutter with his client. In the second place, there were serious misrepresentations made by Mr. Sutter to the Court, at the expense of his client, which I frankly believe to be an improper exercise of professional responsibility. Thirdly, all of the proceedings cited herein took place in a case in which a jury trial was apparently contemplated by all concerned to be waived; the Judge before whom these proceedings had taken place was to be the sole trier of the facts. With all respect to Judge Dooling, whom I am advised and believe is a fair-minded man, no one could sit on the bench in a case in which defense counsel was making the statements made by Mr. Sutter about me and not be severely prejudiced against me before a single witness had been called for either side at the trial. I just do not believe that it is humanly possible for a judge, no matter how fair, to ignore the impressions thus created by a defendant's own counsel.

46. The proceedings on the afternoon of September 1, 1976, were marked by the complete failure of Mr. Sutter or his office to appear in my behalf. A substitute attorney was called and as a result of his pleas to the Court, I was released in a $10,000 personal recognizance bond, and my permitted travelling area further curtailed.

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[7] Of August 31st.

47. On September 2, 1976, at Westbury, Mr. Sutter and I were present and I clearly spread upon the record my continuing dissatisfaction with Mr. Sutter's representation of me to that date. It was not until there was a conference in a side room in which my son and Mr. Frazer participated that I finally agreed to permit Mr. Sutter to continue to represent me and then only because of his explicit promises to call the defense witnesses I desired and felt crucial to the case and subpoena the pertinent documents previously outlined. As previously noted, no such witnesses were called and no such documents were subpoenaed.

The Side Bar Conferences and Other Comments Of Counsel During the Trial.

48. During the course of the trial, my attorney's comments to the Court were grossly prejudicial, having been made to the Court as the sole trier of the fact. Many of these conferences were at side bar. I question the need and frankly the propriety of side bar conferences in a case in which the Court is the sole trier of the fact. Perhaps for procedural convenience, a side bar conference might be held in order that the colloquy not be heard by a witness presently testifying; but in my case, there were numerous side bar conferences, some of them held when no witness was on the witness stand. I am advised that the usual rationale for a side bar conference is to keep colloquy from the hearing of the jury. In this case there was a 1-man jury and the side bar conference accomplished no end, except to keep the colloquy from the ears of the defendant. This in my opinion violated my right to be present at all stages of my trial, something that the Court referred to at page 15 of the August 31st transcript. Moreover, the substance of the comments of my counsel to the Court were such as to strengthen the Court's impression that I was an untrustworthy person, unworthy of belief and without credibility. I quote some of the

remarks which appear in the trial transcript. Those remarks as were made at side bar were not known to me until after the verdict when I received the trial transcript.

49. At page 14, Mr. Sutter stated,

"If your Honor please, you can obviously see that there is a difficulty between attorney and client in this particular matter. I have received from Mr. Graber accusations concerning the United States Attorney. I have my own opinion as to the believability of those things concerning Mr. Caden and my relationship with Mr. Caden has been most honorable, at least in my opinion. I don't know what his is.

I find it difficult to believe that the certified shorthand reporter employed by the United States government would deliberately falsify grand jury testimony. I find that rather difficult. Can there be error? There can be errors in anything. Can there be omissions? Yes. Falsification, I find hard to believe.

I find it difficult to believe that a gentleman of the stature of Mr. Caden would threaten witnesses, would employ all of those things that we would find abhorrent in the practice of criminal law."

50. At page 16, Mr. Sutter said,

"I will say this: When I met with Mr. Graber on Monday I told him he had to be there and he told me point blank he would not."

Mrs. Graber: That is not so.

Mr. Sutter: You weren't there mam, please."

51. At page 17, Mr. Sutter stated,

"All I can tell you is, Judge, we have done our job in this case. People have been available for Mr. Graber. I have not. I concede that sir, but people who are responsible for the preparation have been available to Mr. Graber at any time that he sought them.

I want to say very frankly I abhor the accusations against Mr. Caden and the United States Attorney's staff. I have not found those to be verified in any manner whatsoever.

52. At page 17, Mr. Sutter said in answer to the Court's statement that the government was prepared to go forward, "I am as counsel. I don't know if defendant is, that's my problem."

53. At page 20, the Court said,

"I think the way the matter is now I suggest that Mr. Graber has felt free to criticize your conduct as a lawyer in devastating terms, as well as the government and its representatives. I think, perhaps we had better take a short adjournment and talk, for you to reach a clarification with Mr. Graber.

Now, we had received your assurances at an earlier time, Mr. Sutter, and that in part explains the selection today of the trial date and to the convenience of the defendant and his ailments, ..."

54. At page 23-24, Mr. Sutter stated,

"Mr. Graber is emotionally disturbed to the extent, if your Honor please, that he cannot cooperate in the defense. I am sure that medical science at this point has developed something that can calm Mr. Graber down so that we can proceed at two o'clock.

I have just asked in the interest of mercy, not in the interest of justice, and I think Mr. Graber will confirm the fact that he, at this point, is incapable of conferring with me. Although we are friends, again, he just can't do it, Judge.

I sat down and asked questions and things and he admits to me, now, that he can't answer these questions, that he is concerned about this, that and and other things...."

55. At page 27, Mr. Sutter after reading Dr. Stefano's report dated September 2nd, stated,

"Judge, I can tell you quite frankly, I have not been able to rationally communicate with this defendant. Mr. Frasier has seen this gentleman for at least ten times, possibly twelve. We have had a great deal of difficulty communicating.

Mr. Graber, of course, has had injuries sustained to him by virtue of his service with the United States of America in the war. It's probably the same war that you and I were in, Judge.

* * *

I was on our side."

56. At page 27, Mr. Sutter reported to the Court about me, "I can tell you, quite candidly, when we spoke; he was weeping; he was disturbed."

57. At page 30, Mr. Sutter said,

"I told your Honor that the other day and I have appeared every time. I am preparing to go ahead. My defendant is not...."

58. At page 32, Mr. Sutter asked the Court,

"Take a look at my defendant. Can you possibly put him on trial in his condition now?....I can't go to trial with a man in that condition, Judge. I don't think it's proper and I can't get up here and waive the right that he has without his knowledgeable consent."

59. At page 37, the Court stated,

"According to what Mr. Sutter told us on Monday, against his advice, he [meaning I] left this jurisdiction, took an arduous car ride with his family, returned, and quite frankly, I think he is, if he is capable.... that there be some effort by the defendant to go to that place and have the examination conducted."

60. At page 37, the Court said,

"I put the emphasis I did on the representation of counsel...."

61. After stating for the record that he could not rationally communicate with me and that I was not in a condition to proceed to trial, my attorney inconsistently, in open court, asked me, "Do you still desire to waive a trial by jury" (page 39) Evidently my answer was practically inaudible, because Mr.Sutter then said, "I believe he said 'yes I will', I don't know if your Honor heard it." Immediately thereafter Mr. Sutter said, "It may be - you know Judge if we got a man who is emotionally disturbed, the last thing I want to do is have another attorney come in if he gets convicted, that the waiver was not executed competently. My waiver is executed competently.

62. The Court quite properly stated, "I think it is but I don't believe it carries much weight. It is the defendant".

63. At 458 of the trial transcript, after the conclusion of the government's case, Mr. Sutter stated,

"Now that his motions have been denied, as I told him over the weekend that they would be--that was a matter of a little bit of flamboyance on my part, Judge --I don't want to be in a postion,

your Honor, where he is going to claim that we did not spend enough time in preparing him. I can assure the Court that I have spent with Mr. Graber since our last recess in excess of fifteen hours for about twenty minutes of direct testimony. He now has his own ideas with respect to what the defense should be. They don't concur with mine." (September 13, 1976)

64. I categorically deny that Mr. Sutter spent fifteen hours with me during the period he mentioned or during any period. The most time that he spent with me was an hour on Sunday night, September 12th, 1976.

65. At page 458, Mr. Sutter requested a recess "in order that I can go over all of these witnesses with him whom I --I don't think they have any relevance in this case. And I am candid to say that. So that there can be no criticism of anybody's conduct with respect to this case in the event that there should be a conviction."

66. At page 459, Mr. Sutter stated,

"He's got some nasty things to say about Mr. Drucker. And he denies that the transcript is accurate and things of that nature, of which there is no question about, your Honor."

67. At page 459, Mr. Caden stated,

"With all due respect to Mr. Sutter--and this is not meant to be insulting, but his client is a strong-willed man. And while his approach to the case either in strategy or in any other way may be different from Mr. Sutter, I think that the defendant is prepared to testify and he wants to have his say."

68. At page 459, Mr. Caden stated,

"I am sure Mr. Sutter, as he indicated, prepared his client."

69. At page 460, Mr. Sutter stated,

"My problem is I don't know if I am going to call any others [witnesses]. These are things we have to discuss. Last night we reached an agreement concerning other witnesses. And now he has just revoked that agreement at the recess and wants other things done."

70. At page 460, Mr. Sutter stated,

"I am asking you that we don't have any defects in this case wherein he is going to claim, or be it in my opinion that he is incorrect, that he wasn't afforded an adequate opportunity."

All of the material quoted between pages 457 and 463 were at side bar out of my hearing.

71. At 461, Mr. Sutter assured the Court,

"I am going to have him in my office at 2 o'clock this afternoon and I am going to be working with him home tonight. We will go out to dinner and then come back to the office at 8 o'clock. I will work with him until 1 or 2 in the morning. The work doesn't bother me at all. It is just that I don't want any criticism leveled with respect to any possible conviction."

The Court thereupon stated,

"Now, I think we do have a man who has manifest - and so Mr. Druker and Mr. Sutter found --he is difficult to deal with.

I don't know what it will do to my calendar, but let's go over until 10 o'clock tomorrow. But you must tell him that that is the end of the line."

Mr. Sutter then stated,

"Judge, I am a believer in finality. I happen to be a trial attorney. And I understand the e situations. But this is a very difficult man. As a matter of fact, he is the only one besides myself who I can't figure out."

72. At page 526, Mr. Sutter stated:

"Judge, I don't believe I have anything more, but I don't want any more trouble from him."

73. At page 527, Mr. Sutter stated:

"I'm telling you it's my present intention. This guy is a boat load of bananas. If he insists upon something, I'm going to have to do it, you follow? If it does get into any other areas, they're not going to be of any significance, I can assure you."

This colloquy also took place at side bar.

74. A reading of the Court's verdict rendered following the trial makes it clear that my credibility was in issue and that the Court found that I was not credible. For example, at

page 3, the Court found that the transcript of the grand jury testimony, "is an accurate transcript of the questions asked of defendant and the answers he gave" (the Court will recall that on two occasions, Mr. Sutter interposed his own credibility in opposition to mine on just that very question, namely whether the grand jury transcript was accurate).

75. Large portions of the grand jury transcript were recited by the Court in its verdict, although these portions did not encompass the acts of perjury alleged by the government against me.

76. At page 12, the Court found the evidence credible that I caused cards to be prepared for the departmental employees showing the name of the employee and his annual salary and that the cards in at least one year also had the 1% amount computed on the card.

77. The Court also found that there was "considerable credible evidence that defendant did not advise certain employees that contribution was mandatory...."

78. At page 12, the Court further found that "there was also credible evidence that defendant told one employee who had failed to make a contribution that he would not receive overtime because of his failure to make a contribution."

79. At pages 12-13, the Court found, "There was credible evidence also that defendant gave another employee to understand that if he wished to be reclassified to a certain advantageous compensation basis, he would be expected to make a contribution".

80. At page 14, the Court rejected my testimony that I was not given an opportunity to complete my answers but was interrupted before I had completed my answers to the questions quoted in the indictment.

81. At page 22, the Court inferentially rejected my testi-

mony that I was treated roughly in the grand jury room questioned in an accusatory manner and not permitted to complete certain answers (this was also the subject of two of Mr. Sutter's comments to the Court, in which he interposed his own credibility against mine and flatly told the Court that he would not believe such accusations).

82. At page 24, in finding the perjury central to the verdict, the Court concluded that "in each case the answers produced, and were intended to produce, the impression that the defendant was not active in the solicitation of 1% contributions....".

83. The comments of my trial counsel could not have failed to produce in the Court an ineradicable impression that I was untruthful. Such an impression is fatal to a conviction it seems to me, especially in the case of a perjury conviction.

Conclusion

84. I respectfully submit that I lacked appropriate representation as required by the Sixth Amendment; that I was deprived of effective assistance of counsel; that counsel in fact prejudiced me irrevocably before the trier of the fact by making numerous improper and prejudicial comments to the Court, many of them out of my hearing; that the pretrial arrest was caused by a complete failure and inattention of trial counsel to his obligations to his client and that the arrest produced before any witnesses were called or evidence taken an impression in the mind of the trial court that I was unworthy of belief or trust; and that in crucial respects the comments of counsel dealt with the very matters at issue for decision by the trier of the fact, and his comments in part became testimony of an unsworn witness against me, which I neither heard nor had the opportunity to confront. The impression created in the mind of the trier of

fact by reason of the fact that these comments originated with defense counsel, cannot possibly be overstated. In effect, a portion of the trial was being conducted at side bar out of my hearing and this was prejudicial to me and a violation of my right to be present at my trial.

85. In the interests of justice, I ask for a new trial.

86. I further ask the Court to vacate and set aside my jury waiver on the grounds that I was not advised by counsel at the time it was executed. To the extent the Court relied upon my affirmative answer as to jury waiver given in open court September 2, I ask the Court to disregard the same as made at a time when I was under severe medication, great strain and at a time when my own attorney conceded I was irrational and unable to participate in my own defense.

87. On the basis of all of the above, I also most respectfully ask the Trial Court to disqualify himself because I fear that the impressions previously created by former counsel cannot be erased from any person's mind no matter how fair and temperate. I simply do not believe that the proceedings to date can stand the test of scrutiny as having afforded to me a fair trial to which all defendants in a criminal court are entitled. I certainly believe that the standards in this most honorable federal court require a greater degree of protection of defendant's rights than was afforded to me.

Sworn to before me this
2nd day of December, 1976
Barbara A Pedersen
Notary Public

BARBARA A. PEDERSEN
NOTARY PUBLIC, State of New York
No. 52-4536776 Suffolk County
Commission Expires March 30, 1977

Raymond Graber
RAYMOND GRABER

Postscript

Text of Footnote 6, added after execution of affidavit and read to me over the telephone by my attorney:

6

The transcript of the proceedings held September 1st, 1976 have now arrived in my attorney's office. At 10 o'clock A.M., in Brooklyn, Mr. Sutter was not present, nor was anyone else on my behalf. Mr. Caden applied for issuance of the bench warrant stating at page 3, that he had talked to Mr. Sutter only once about 10 minutes to 10 that morning, that Mr. Sutter had not telephoned Mr. Caden the night before; that Mr. Sutter had stated that he had no information the night before; that at some unspecified time his "secretary" contacted the Sheraton Hotel and was advised Mr. Graber had checked out; that he "believed that Mr. Frazer had spoken to me" and "believed" that Mr. Graber was "thought" to be on his way home, "but wasn't absolutely certain about that" (page 4).

One of the witnesses had reason to believe that I was on my way "out of New York on vacation", "Mr. Sutter and I quite frankly came to no conclusion as to where Mr. Graber is this morning and whether he is on his way back or on his way somewhere else. I feel quite insecure not knowing where Mr. Graber is. I told Mr. Sutter I would make this application"(page 4).

The Court's question about whether anybody communicated with me since the day before was not answered, with definite facts (pages 4-5):

"Mr. Sutter was quite vague and I didn't press him, quite frankly, because Frazer wasn't there and Frazer is apparently in another court, and I was led to believe that Mr. Frazer or Mr. Sutter would call me to confirm that his client is on the way back".

At page 5, lines 4-10, the following appears,

"I find from the agreement that we had yesterday had either one spoken to him and had this conversation and that where Mr. Graber indicated he was on his way back he would have called me. So Mr. Sutter also indicated to me he had no reason to believe with any real certainty he would see Mr. Graber today.

He made an effort personally to call and find out where his client is."

At 5:00 P.M. after my arrest no one from Mr. Sutter's office appeared in my behalf but rather local counsel in Brooklyn.

At pages 8-9, I said to the Court:

"Judge Dooling, I have inwardly been trying out and if Counsel was someone who was an attorney friend of mine, I had wished to call you up for many many weeks. I think I am what you call a friend to the Court.

"THE COURT: I am the judge, so you'd better be careful of me, Mr. Graber.

"MR. GRABER: I would explain it this way. When this investigation was occurring --

"THE COURT: It would be much wiser if you didn't talk about the case to me, because I made out --"

At page 9, I told the Court exactly what I have previously stated in this affidavit, namely, that Mr. Sutter told me it was not necessary to be in Court on the 31st but to leave an itinerary; and that I had received a 12:30 A.M. telephone call from Mr. Frazer; and that I said that I could comply with the direction to be at Mr. Sutter's office at 4 o'clock on the 1st, "without any difficulty".

At page 11, I told the Court of my difficulty in getting Mr. Sutter to contact me and confer with me.

At page 12, I stated, "I pleaded and pleaded with Mr. Sutter to start preparing a defense. I pleaded with him. We never met. We never discussed substance, we never discussed possible witnesses."

At page 14, line 15, speaking of Mr. Frazer, I stated to the Court, "I noticed that this young boy was taking over for Mr. Sutter. I don't believe he is a full-fledged lawyer."

At page 16, lines 5-9, I reiterated:

"But, as I say, no preparation, no meetings,no discussions of the issues, no reading of the minutes. He mentioned I had many witnesses. I have got to alert them to be home for a trial. Don't worry, we'll get to it."

At pages 17-18, Mr. Caden reiterated that it was Mr. Sutter's statement as an officer of the Court that he directed me to be there on the 31st that caused the proceedings to take place. I immediately denied that Mr. Sutter had had said that to me:

"That is not true. He took my itinerary, he knew where to get me, even 12:30 last night."

The Court perhaps incredulous, stated,

"He knew where you were?"

At page 18, lines 20-22, the Court said,

"You can be quite sure had we thought there was any problem between lawyer and client, we would have long since looked into it. There isn't much we can do."

At page 21, Mr. Greenberg, who came in from Court Street told the Court,

"One of the major grievances seems to be lack of communication between himself [meaning me] and his counsel".

At page 23, Mr. Greenberg stated that he did not even know that I had been arrested by the Marshals!

At page 24, line 6, the Court said:

"The impression produced by Mr. Sutter to me, unless posed to Mr. Caden, here, was that Mr. Graber had calculatedly absented himself from the District and from this Court.

At pages 24-25, the Court said:

"That is not obviously, we wouldn't have asked the marshalls to take him into custody to assure his presence in court tomorrow unless we had been given the unmistakable impression that unless that was done he would not appear for trial. That is the only

reason it was done now. That is all I'm interested in.

Now, Mr. Graber has other problems with his Counsel. If he has come to a parting of the ways with his Counsel, and that is understandable, we'll have to deal with it when it comes up."

At page 28, Mr. Caden said:

"Secondly, that Mr. Sutter in the strongest word I have ever heard an attorney use since I have been with the Assistant Attorney's Office, informed me that he informed the defendant of this trial and when the defendant said he was either unwilling or unable to attend, his words were he ordered him to be in the courtroom the following day. On that representation, as I understand it, Mr. Graber left Mr. Sutter's office and he went to Cornell."

At page 33, Mr. Greenberg stated:

"I don't think anybody really believes that Mr. Graber is fleeing the jurisdiction to avoid the processes of the Court."

The Court responded,

"No, but I do."

447a

382 Roosevelt Blvd.
West Hempstead, N. Y. 11552
May 24, 1976

John J. Sutter Esq.
33 Willis Ave.
Mineola, N. Y. 11501

Dear John:

I believe that the old expression goes that it is better to light one candle than to curse the darkness!

I'm sure completely in the dark regarding the status of my Federal problem at this point. I've heard some conflicting rumors by heresay; that's all.

At the least, I would be grateful to learn whether or not my original early August trial date still stands; and in the event that it does, what time-table might I expect regarding the establishment of communication with you for the purpose of preparation.

Any enlightening advice would be appreciated.

Thank you.

Sincerely,

Raymond W. Graber

448a

382 Roosevelt Blvd.
West Hempstead, N. Y. 11552
June 9, 1976

John J. Sutter Esq.
33 Willis Ave.
Mineola, N. Y. 11501

Dear John;

Last week, a representative of the U. S. Marshall visited our office to serve subpoenas to Government witnesses involved in my Federal case. He served John Zarudsky in my presence; also had subpoenas for Frank Buchalski, Henry Otto, Harry McDonnell and Yolanda Speranza. The return date of July 25, 1976 puzzled me since I had read in the newspapers that my trial was scheduled for August 7th.

I hope that you can understand the concern that I have at this time. As I previously stated via letter, I am completely in the dark regarding the status of my case since there has been no communication between us.

I do recall, that when we were first brought together at the time of my County and Federal arraignments you stated that I could expect close communication with you ie:

1. We would get together within a week and review my Federal Grand Jury minutes (which incidentally are grossly inaccurate).

2. That you would be able to retrieve my debriefing report, summarizing the questions and answers involved in my Federal Grand Jury appearance; would advise me where they have been kept in the period after I submitted the report to Jim Catterson.

3. That you would provide me with copies of all correspondence that would transpire between you and the U. S. Attorney and/or the Nassau District Attorney in matters relating to my case; would keep my posted as events unfolded.

At this time, I respectfully submit the following wishes on my part if in fact I am scheduled for a late July or early August trial:

1. Unless you have a strategy that I cannot perceive, I am strongly opposed to merging my Federal trial to a joint trial with the other men who were indicted on the same day that I was. If I recall correctly, the judge that we appeared before seemed to share some of the concerns that I presently have in this regard.

2. I respectfully request that a motion be made to have the trial held at the Federal Building in Westbury. I have several valid reasons for making this request including, but not imited to

   a. Reasons of health (I can obtain a physicians letter stating that for reasons of health the additional demands of daily travel to Brooklyn would be detremental).

   b. I have a number of character witnesses and other witnesses who can give very favorable testimony on my behalf

who would find travel to Brooklyn either inconvenient or a gross hardship; all of these persons are residents of my home community.

c. One of the key Government witnesses is Yolanda Speranza, former secreatary to Commissioner Udell, Yolanda will be in her ninth month of pregnancy in late July; has a history of miscarraige. I believe that I have both the witnesses, and can get the evidence with you advanced help, to completely discredit Mrs. Speranza. However, I suggest that hitting her hard while she is pregnant would backfire since I presume that jurors like the rest of us would have sympathy for an expectant mother. Therefore, I would hope that a trial involving Mrs. Speranza vs. myself would not by heldwhile she is in her present condition.

d. How did Angie Roncallo succeed in have his Federal trial held in Nassau? That was a wise move on his part . . . at the least has set a precedentfor equal treatment.

Finally, I am disheartened that we have not hald a joint briefing before the case has moved so far down the ine. I suggest that there is sufficient fact resulting from both the Federal and County investigations, as well as my Federal Grand Jury appearance and subsequent experiences with Mr. Drucker that I had, that would cause both cases to be thrown out due to misconduct on the part of prosecutors, denial of equal protection under the law etc. etc.

Perhaps it is still not too late the explore the above, if only I could meet with you. I've been tempted to approach ACLU on this issue --- but I'll be damned if I want to confide with that group!

I respectfully request that some form of communication be established between us fortwith.

Thank you.

Sincerely yours,

Raymond W. Graber

Raymond W. Graber

39 Rockcliff Road
West Hempstead, N.Y. 1155.

450a

July 14, 1976

John J. Sutka, Esq.
33 Willis Avenue
Mineola, N.Y. 11501

Dear John:

My matter such --- once again we did not meet!

I assume that Gene Pace reported what I learned about the unethical pressure tactics that Assistant U.S. Attorney Caden is now using against potential witnesses in my case. Today, another of our employees reported to me that Mr. Caden operated when he recently interviewed Randi Buchalter of our department.

Is it that the U.S. Attorney now feels that it is necessary to frame me because he really doesn't have a case? I don't like what is now going on --- don't I have any rights or protections against a negligent type of Assistant U.S. Attorney?

Attached is a report on the Buchalter matter. No, I never solicited him!

Cordially,
Ray Shulder

August 17, 1976

Angier

451a

BEST COPY AVAILABLE

Dear Jim

Per your request transmitted herewith are the most recent feed-backs on Cuban intentions. I'd report that he is a little cautious and—not without legitimate confidence. Actually he is now more optimistic about the situation—but many more hills and I have documents to prove that they are not being finished.

Cuba has placed two motions on Monday for trial on August 30th [illegible] procedure. Both motions—[illegible] on Monday. This is contrary to the understanding that [illegible]

Several friends have also commented that Castro's presentation of my [illegible] with appeal to Mr. Powell, was damaging me [illegible]. They were impressed on the [illegible] and by the [illegible] they could control to [illegible] those comments. They were [illegible] the [illegible] of this [illegible]

[illegible] who have been with me
This has confused many and is leaving
our organization apart. I feel that
Cadre's tactics no longer make a fair
trial possible at this stage. What do
I get the help and support that the party
and my attorney promised me when this
thing started?

There is also information that Cadre is
connected with what I may term as
a supernatural kind that would explain
his various attempts to get into my home/ to annoy/ phone
[illegible]. I have been subjected to
a lot of pressure --- [illegible] that [illegible]
which can not [illegible] in [illegible]
[illegible] --- pressing [illegible]
of [illegible] to [illegible] How do I stand on
this?

[illegible] about [illegible] --- [illegible]
[illegible] 431- [illegible].

Cordially,

[illegible]

382 Roosevelt Blvd.
West Hempstead, N. Y.
August 27, 1976

John J. Sutter Esq.
33 Willis Ave.
Mineola, N. Y. 11501

Dear John:

Attached is a report on a Caden interview of Jack Linden. As Mr. Linden reports, "he was treated very harshly" because he would neither implicate me or become a witness for Mr. Caden. I am getting many such reports. Even my close associate, Allen Carpenter, was shaken for several days because he could not resolve Mr. Caden's accusations against me against what he has closely observed during a ten year business relationship with me. Today, Carpenter advised me that he stands by the affidavit that he has previously given to me.

Don't you now have enough evidence of misconduct on the part of the Assistant U. S. Attorney to go for a motion of dismissal?

Additionally, more and more of my associates have stated that they feel that I can no longer have a fair trial as a result of Mr. Caden freely circulating my letter of last fall to Mr. Drucker. Did he have the right to show the letter so freely, thus causing at least several people to lie out of fear or loyalty to a close friend mentioned in that letter. Now, by word of mouth the contents of the letter are being misrepresented in the department and has confused many since they do not comprehend the facts and the issues. Its revelation put Harold Udell and several of his key lieutenants on guard - - to compound their cover-up.

As to Mr. Caden's key witnesses, I have trump cards against most of them. One is the man who jumped with joy on the day that I was indicted and stated that "at last he would have my job." I have a secreted confidental file on a second. Some years ago I caught him with his fingers in the cookie jar - - stopped his rackets at the Town Marina East. Review my report about Bill Brown which is in the file. Follow through on his comments relating to the Bay Constables will reveal that Udell ordered me to prepare and give him certain salary or one-percent information now in Mr. Caden's possession. Udell personally gave those cards to the Bay Constables.

John, please do not miscalculate. I will not go to trial on short notice; nor if I'm not fully aware of your strategy well in advance. Additionally, I insist on using my witnesses and they must be allowed to freely tell it like it was.

Frankly, I resent being ordered by Mr. Drucker to go on forced leave without explanation. I also resent that he has evaded to answer various questions that I have asked. I have a right to know what is going on.

Unless explanations and information is forthcoming, I refuse to stay off of my job beyond Labor Day. I also want that we review my grand jury minutes forthwith. Incidentally, I have been advised that Mr. Caden is misrepresenting some of the contents of the minutes.

Sincerely,

[illegible]

UNITED STATES DISTRICT COURT
EASTERN DISTRICT OF NEW YORK
- X

UNITED STATES OF AMERICA,

- against -

RAYMOND GRABER,

Defendant.

76 CR 166

- X

STATE OF NEW YORK)
) SS:
COUNTY OF SUFFOLK)

NANCY E. GRABER, being duly sworn, deposes and says:

1. I am the daughter of the defendant. I am 25 years of age. I live at home with my parents and my brother Lance. During the period between my father's indictment and conviction, I had dinner with my parents and brother at home. I was aware of my father's state of mind during the months preceding and during this trial and I knew that he was becoming increasingly agitated and upset because of his inability to meet with his attorney, John Sutter, to prepare for trial.

2. His communication difficulties with his attorney were the topic of conversation at numerous dinners throughout the period from the indictment on.

3. I knew from my parents that Mr. Sutter had cleared their trip to take Douglas back to Cornell on August 31st, assuring my father that his trial would not be held then.

4. Needless to say, my father and every member of my family was horribly upset at my father's arrest on September 1st. I know my father to be a law abiding citizen who would never have willfully avoided appearing in court if directed to do so. He would never have made hotel arrangements and other arrangements in connection with taking Douglas to Cornell had anyone ever indicated to him that he was expected

to be in court on that day.

5. I knew my father had been cut off from access to the files and records of his own department during the trial and some time before the verdict of the court was rendered, he showed me a note in the handwriting of Commissioner Harold Udell, barring him from access to these files and records. From the conversation at the dinner table throughout this unhappy proceeding, I know that my father advised his lawyer's office of being cut off from the files and records and that Mr. Sutter had this handwritten Udell note with him at the counsel table on the day of the verdict when Mr. Sutter made a rather nebulous motion, denied by the court, to delay the rendition of the verdict for ten days because certain "governmental agencies" were withholding information. I was in court on the day of the verdict and my recollection is that the court denied the motion as being too vague.

6. I also remember on the day of the verdict, the Assistant U.S. Attorney stating that there were numerous files of the government relating to testimony of prosecution witnesses which had been at all times available to the defense but which the defense had not examined. I remember my father telling me during the trial that he had questioned Mr. Sutter about this portable rack full of records and had been told that the records did not pertain to my father's case at all, but some other.

7. On the day of the verdict, there was a discussion between my father and Mr. Sutter relating to a "cage" or enclosure which Commissioner Udell had directed be constructed around my father's desk, thereby isolating him from his co-workers. My father related to Mr. Sutter that one of his co-workers had stated in reference to my father that, "He is in

Allenwood already". Mr. Sutter stated that he would send an investigator down and take pictures. Mr. Armond Romano, an investigator employed by Mr. Sutter, also stated in my presence that he would take pictures, the implication was that this new material would be used on a motion for a new trial.

Sworn to before me this
29th day of November, 1976

Barbara A. Pedersen
Notary Public

BARBARA A. PEDERSEN
NOTARY PUBLIC, State of New York
No. 52-4506776 Suffolk County
Commission Expires March 30, 1977

Nancy E. Graber
NANCY E. GRABER

UNITED STATES DISTRICT COURT
EASTERN DISTRICT OF NEW YORK
- -X

UNITED STATES OF AMERICA,

- against -

76 CR 166

RAYMOND GRABER,

Defendant.

- -X

STATE OF NEW YORK
SS:
COUNTY OF SUFFOLK

LANCE J. GRABER, being duly sworn, deposes and says:

1. I am the son of defendant Raymond Graber. I am 15 years of age.

2. On Sunday, September 12th, 1976, while my father's trial was in progress, I accompanied him to the office of his then attorney, John Sutter, Esq., in Mineola, New York, arriving at approximately 8:25 P.M. My father previously told me that he had an 8:30 P.M. appointment with Mr. Sutter who would be driving down from Connecticut. The defense case was about to begin at 10:00 A.M. the next day in Westbury.

3. My father and I waited around in our car on the street by Mr. Sutter's office for approximately 1-1/4 hours, during which time no one showed up. At about 9:45 P.M., Mr. Sutter pulled up with his family in the car. Mr. Sutter's first words were, "Jim Frasier didn't meet you here?". My father, Mr. Sutter and I went inside Mr. Sutter's building, which he had to unlock to let us in.

4. Mr. Sutter telephoned Mr. Frasier from inside and at some time during the next hour, Mr. Frasier arrived.

5. Mr. Sutter took my father into one office and I waited in an adjacent office, the door between was open and I could clearly hear all of the conversations between my father and

Mr. Sutter, and later after Mr. Frasier arrived, among all three.

6. None of the conversation concerned the circumstances of the charge against my father or the evidence to be offered by the defense. As I recall, Mr. Sutter spent approximately 25 minutes to half an hour counselling my father as to how to act on the witness stand. For example, he told him if he didn't understand the questions, to say so, "Keep your eye on the ball", and various other similar tips as to his demeanor on the witness stand.

7. Most all of the rest of the time was social chat as I recall. Mr. Sutter made drinks for himself and Mr. Frasier. At the end of the conference, my father asked Mr. Sutter about subpoenaing witnesses for the defense case. Mr. Sutter asked "Is there anybody you have in mind?". My father gave him a number of names; the two I remember were Mr. Carpenter and Mr. Foley. Mr. Sutter said that my father should come to the office the next morning, September 13th, at 9:00 A.M. and meet with Mr. Frasier, sit down with him, tell him what witnesses he wanted subpoenaed and Mr. Frasier would see to it that the subpoenas were issued.

8. My father asked Mr. Sutter about character witnesses and Mr. Sutter told him that if this were a jury trial, he would want character witnesses but not in the case of a trial before a judge.

9. I later learned that my father went to Mr. Sutter's office at 9:00 A.M., the next day and waited for Mr. Frasier an entire hour and no one saw him, whereupon he was told to leave and get over to the Court.

Sworn to before me this
29th day of November, 1976

Barbara A. Klee
Notary Public

Lance J. Graber
LANCE J. GRABER

UNITED STATES DISTRICT COURT
EASTERN DISTRICT OF NEW YORK
- -X

UNITED STATES OF AMERICA,

- against - 76 CR 166

RAYMOND GRABER,

Defendant.

- -X

STATE OF NEW YORK
SS:
COUNTY OF SUFFOLK

RAYMOND W. GRABER, JR., being duly sworn, deposes and says:

1. I am a son of the defendant. I am 26 years of age.

2. I was present at Federal Court in Westbury on September 2nd, 1976. My father broke down and cried during the court proceedings. There was a recess. Mr. John Sutter, my father's then attorney, Mr. James Frasier, Mr. Sutter's law clerk, my father and I went into a sideroom adjacent to the courtroom to have a conference.

3. In the sideroom my father was still very upset and crying. He told Mr. Sutter, "I am very upset about this arrest". Mr. Sutter said, "It's all a mistake. You weren't supposed to be arrested." I said to Mr. Sutter, "John, he's not in a condition to have a trial".

4. Later on while my father was engaged in conversation with Mr. Frasier, I told Mr. Sutter that I was very upset about my father's arrest since Mr.Sutter had known he was taking my younger brother, Douglas, to Cornell on August 31st and had even taken his itinerary.

5. Mr. Sutter said, "I told him he had to be in court, your father only hears what he wants to hear, I'll testify to that.".

6. At one point during the conference in this sideroom, I asked Mr. Sutter about his apology which he made in court about my father's statements about the Assistant U.S. Attorney threatening witnesses. Mr. Sutter told me, "I had to do that." He went on to explain that in a federal court, in the eyes of the Judge, the U.S. Attorney can do no wrong. He stated you do not make allegations of this sort without testimony to back it up. He then went on to tell me that both in the course of cross-examining prosecution witnesses and in direct testimony from defense witnesses, he would pursue the issue of misconduct on the part of the U.S. Attorney's office. I said to him, "You're going to do that?" He then said, "I certainly am". After that he embraced my father. I then was sent out by Mr. Sutter to try and track down Dr. Stefano by telephone.

7. I was unsuccessful in contacting Dr. Stefano but did learn that he was at Mercy Hospital. The proceedings resumed before Judge Dooling in the courtroom. Arrangements were made for my father to be examined by Dr. Stefano at Mercy Hospital during the noon recess, where he was then taken.

8. During the midday recess I had been asked by Mr. Sutter to telephone him with the results of my father's medical examination at Mercy Hospital. I attempted to do so. His office told me he was in cou I identified myself and said that he had left court earlier and I knew he was not there. I was then given a telephone number to call. I called it; the telephoned was answered, "Caucus Restaurant". I asked for Mr. Sutter. Mr. Frasier, instead, came to the phone and refused to permit me to speak with Mr. Sutter, saying, "He's eating. We will see you in court at 2 o'clock".

9. At 2:00 P.M., when we entered the courtroom, one of the marshals who had arrested my father the day before was sitting

in the courtroom. Seeing him, my father again broke down and cried and had to be taken into the sideroom. I asked Mr. Armand Romano, an investigator for Mr. Sutter, if the marshal could be removed. Mr. Romano said he would ask him to leave because he was upsetting my father but that he obviously could not order him out. The marshal did leave but for the remainder of the afternoon's session, my father was quite agitated and visibly upset.

10. I was present at the afternoon session which resulted in an adjournment of the trial until September 7th, 1976.

11. After the adjournment of the afternoon session, I had a conversation in the courtroom with Mr. Armond Romano in which I asked Mr. Romano, "What about subpoenaing our witnesses and documents?". Mr. Romano stated to me that, "We have no power of subpoena until the trial begins". He told me that whenever the prosecution called a witness, the defendant had the right to subpoena his prior testimony and "we will do it".

12. I pressed him about the documents in the files of the Town of Hempstead Department of Conservation and Waterways. Mr. Romano expressed his opinion that the best place for those records was in the file cabinet in the offices of the department until the trial was in progress and it was appropriate to subpoena them. That way, Commissioner Udell (whom my father feared would destroy records) would have no idea which records would be of interest or value to the defense.

13. I asked Mr. Romano how much investigation had been done on this case. He then gave me a lengthy explanation of how busy an attorney Mr. Sutter was (he mentioned the Dr. Friedgood trial) and stated that in the 11 years he had been doing work for Mr. Sutter, the procedure was for the investigators and staff members to investigate the case thoroughly and that Mr. Sutter

did not normally meet with the client or even see the material until shortly before the trial, at which point he would be briefed by his staff. He said that this system had been very successful for 11 years and that they had never had any surprises from prosecution witnesses using this procedure.

14. Mr. Romano also said that they were extremely confident that this case was a winner, among other things that he felt the indictment was faulty and that we (meaning my father and his family) should just trust them to prepare the witnesses and conduct the defense.

Sworn to before me this
29th day of November, 1976

Notary Public

DAVID S. J. NEUFELD
NOTARY PUBLIC, State of New York
No. 52-4600973
Qualified in Suffolk County
Commission Expires March 30, 1978

RAYMOND W. GRABER, JR.

UNITED STATES DISTRICT COURT
EASTERN DISTRICT OF NEW YORK
- X

UNITED STATES OF AMERICA,

- against -

RAYMOND GRABER,

Defendant.

76 CR 166

- X

STATE OF NEW YORK

COUNTY OF SUFFOLK

EILEEN GRABER, being duly sworn, deposes and says:

1. I am the wife of the defendant. We were married on the 23rd day of April , 1949. We have four children.

2. It has been obvious to me that my husband was becoming increasingly upset since the end of May 1976 with the fact that he was unable to communicate with his then attorney, John Sutter, regarding the defense of this federal criminal indictment. Commencing May 24th, he began to write letters (and in total I believe wrote four) to Mr. Sutter, complaining that Mr. Sutter was giving him no guidance; was not investigating the matter; was not interviewing prospective defense witnesses or even meeting with my husband to determine the identity of proposed defense witnesses; and that any and all contact that my husband had with Mr. Sutter's office was with a law clerk or a secretary and in no cases was my husband being counselled as he felt he should be in this most serious matter.

3. Not only my children and I were aware of my husband's deepening concern and anxiety, but also our doctor Robert T. Stefano, M.D., was acutely aware of a deterioration in my husband's physical and emotional condition as a result of his lawyer's failure to communicate adequately with him.

4. In fact on October 21, 1976, after my husband's trial

had been completed and the verdict rendered, I had a physical examination with Dr. Stefano myself and in the course of his examination he told me in almost these words, "Ray's biggest problem is his attorney".

5. My husband was examined on August 17th, 1976 by Dr. Stefano and a written report of his "exhausted condition" was submitted to the trial court.

6. In mid-July 1976 the originally scheduled trial date approached. My husband attempted to see Mr. Sutter and only succeeded in seeing Mr. Frazer, his law clerk. He reported to me that he was very dissatisfied at not being able to have a meaningful conference with his lawyer and he did not know when the trial would be held but he did know that the judge had originally set it down for the end of July.

7. In any event, there were many other telephone calls and requests by my husband to see Mr. Sutter and although he did see Mr. Sutter's law clerk on several occasions, he reported that nothing substantive was discussed there relative to preparation of witnesses, subpoenaing of documents, etc. My husband reported to me that two or three appointments that he had had with Mr. Sutter were broken during the summer.

8. As summer's end approached, my husband and I became concerned about taking Douglas, who is a sophmore at Cornell University, to Ithaca, New York, for the commencement of his college year. We had planned to do so, but my husband was unsure as to when his trial would begin and obviously did not want to be away when he was required to be present at federal court.

9. Approximately at the end of the first week in August, my husband saw Mr. Sutter for approximately 15 minutes. He came home and reported to me that Mr. Sutter told him that under no circumstances would there be a trial in August. Mr. Sutter had

the Friedgood murder trial and he had the Ulascewicz case to try and Mr. Sutter was going to be away on vacation for approximately two weeks. He assured my husband at this time that it would be alright to make the arrangements to go to Cornell with our son.

10. In mid-August, my husband told me that he had heard that the Assistant United States Attorr had placed his witnesses on stand-by for trial on August 30th. He wrote a letter to Mr. Frazer, Mr. Sutter's law clerk, to advise him of this fact, but he still was being assured by Mr. Frazer and Mr. Sutter's office that no trial would be held in August as Mr. Sutter had said at the beginning of the month.

11. My husband received a telephone call sometime during the week of August 23rd to be at Mr. Sutter's office on Friday afternoon, August 27th, at 2:00 P.M., for the purpose of meeting with Mr. Sutter. By this time, my husband was so disgusted with the long periods in Mr. Sutter's waiting room without seeing anybody and with the cancelled and broken appointments that he called me and asked me to please accompany him to Mr. Sutter's office that Friday. I did so and I was present in Mr. Sutter's waiting room with my husband from 2:00 P.M., until 5:00 P.M. No one saw my husband during that time and we left at 5:00 P.M., being told by the receptionist that Mr. Sutter would not be back that day.

12. On Monday morning, August 30th, my husband got another telephone call to be at Mr. Sutter's office at 2:00 P.M. Again I went with him for the same reasons. We waited in his waiting room for 2-1/2 hours, until approximately 4:30 P.M. At that time Mr. Frazer emerged from an office into the waiting room and dropped my husband's grand jury testimony on his lap and told him to read it. About 15 minutes later, my husband was called into a conference with Mr. Sutter. He was with Mr. Sutter for approximately

ten minutes at the most and emerged and told me as follows:

"John said that it's perfectly alright to go and we should give his regards to Cayuga's waters, so long as we left our itinerary with Barbara his secretary."

In my presence, my husband told Mr. Sutter's secretary, Barbara, that we would be leaving Long Island at 8 o'clock in the morning the next day and that we would be driving directly to Ithaca and that we would check in at the Sheraton Motor Inn on Triphammer Road, Ithaca. We would stay overnight and the following day, September 1st, we would be leaving Ithaca at approximately 8 o'clock in the morning to return to Long Island and that we should be back by mid-afternoon that day.

13. When my husband and I left Mr. Sutter's office, he told me that Mr. Sutter said that he (Mr. Sutter) would have to be in court the next morning but that Dr. Stefano's August 20th, medical report about my husband's condition would suffice instead of my husband's appearance.

14. We did drive to Cornell on August 31st and did stay at the Sheraton Motor Inn on Triphammer Road. We were in our room continuously from approximately 8:00 P.M. on.

15. At approximately 12:30 A.M., September 1, after we had retired for the night, we received a telephone call from a most-agitated Mr. Frasier, Mr. Sutter's clerk. He told my husband, who immediately reported it to me, that as reported by my husband, Mr. Frazer stated that my husband's request that the trial be held in Westbury had been granted. He did not say the trial would be held the next day. Mr. Frazer went on to say that Mr. Sutter wanted to speak with my husband at precisely 10:30 A.M. that morning and that he should call Mr. Sutter's office collect at that hour and that he should further be personally in Mr. Sutter's office at 4:00 P.M. that day.

16. At no time, according to my husband's recital of this conversation, was he ever told that the trial had been commenced or that the judge that day had issued a warrant for my husband's arrest.

17. We left Ithaca the next morning on schedule and made a special stop at Roscoe, New York, to telephone Mr. Sutter, as Mr. Frasier had requested. My husband, after making the requested telephone call, reported that Mr. Sutter was not there and no one else knew why he had been requested to call. My husband then told them of Mr. Frasier's call in the middle of the night and said to please leave a message for Mr. Frasier and Mr. Sutter that he would indeed be in Mr. Sutter's office at 4:00 P.M. that day. The attorney spoken to by my husband was Dana Winslow.

18. We continued our trip which was uneventful until our arrival at our home in West Hempstead at 2:30 P.M. As soon as my husband got out of the car, he was seized by two United States Marshals, placed in handcuffs and arrested. I asked the Marshals why they were arresting my husband and they refused to answer. I asked them to wait until I called my attorney and they did not. I asked them where they were taking my husband and they refused to tell me that.

19. I was, at this point, nearly hysterical and I went to the telephone and called Mr. Sutter's office. I got through to Mr. Frazer and I said to him, "Jim, they arrested my husband". He said to me, "Oh my God, they acted too fast, that's a mistake, that shouldn't have happened." Mr. Frazer said that they would arrange something and told me to stand by for their telephone call which never came.

20. I did not see my husband again until approximately 8:30 or 9:00 o'clock on the evening of September 1st when he arrived home after having had to pay $40 for a limousine for

transportation from the courthouse in Brooklyn. He was beat, bedraggled, fatigued and very upset. I was, needless to say, just as upset.

21. That evening my husband took his usual daily 5 milligrams of librium, which had been prescribed in August by Dr. Stefano. The next morning he took another 5 milligrams of librium before going to the court.

22. My husband, these two days, was additionally taking an antibiotic called erythrocyn for an infected tooth and the combination of the experience of this unexpected arrest and the two medications left my husband in a complete fog, where he was highly agitated and ready to break down at a moment's notice.

23. I accompanied my husband to court on September 2nd and I do not believe that he was functioning mentally or physically that morning at all. I was present in the court at the time the arrangements were made to have him examined by Dr. Stefano at Mercy Hospital during the noon hour and I drove him to Mercy Hospital for the purpose of that examination. At the time of that examination, Dr. Stefano increased my husband's librium prescription to 10 milligrams, four times per day. My husband took an additional dose of librium at the hospital before returning to court for the brief afternoon session on September 2nd.

24. Dr. Stefano had told my husband, in my presence, that he should go to bed and sleep for the entire weekend and get rested up for the trial to begin the following Tuesday, September 7th.

25. At approximately 8:30 in the morning on September 3rd, while my husband was in the bathroom, he called to me in an agitated condition and I ran to him. I found that he was terribly faint and looked as if he was about to vomit. He told me that he had waves of nausea and pain in the upper chest. He was also

coughing violently at this time. I called the fire department emergency squad and they responded and took my husband, via ambulance, back to Mercy Hospital where once again Dr. Stefano examined him and diagnosed him at that time as having anxiety exhaustion, dehydration, gastritis and possible coronary.

26. Dr. Stefano at this time stressed to my husband and me that my husband had to take a thorough and complete rest.

27. We returned to our home at 12 noon. Within minutes after our arrival, the telephone rang and it was Mr. Frazer. He told my husband that he had to be at the Northport Veterans Hospital for the purpose of being examined by the government doctor at 1 o'clock sharp. My husband and I were again completely upset by this demand because he had just come from the emergency room of Mercy Hospital, had been told to take a rest, and now he had to race out to Northport and at that it was doubtful that he could make it in time. I drove my husband to Northport Veterans Hospital for an examination by the government doctor at the request of the Assistant United States Attorney. We arrived at Northport at 1:45 P.M. By the time we arrived, 45 minutes later than Mr. Frazer had said we had to be there, my husband was so upset that he went in and asked that the doctors immediately call the Assistant United States Attorney, Mr. Caden, and tell him that he was at the Northport Hospital because my husband did not want to be arrested again.

28. My husband returned to court on September 7th for the commencement of his trial. At this time he was still on medication, still very upset, and still without having had any meaningful communication with his lawyer.

29. I have personal knowledge and can corroborate some of the things which are set forth in my children's affidavits which are being submitted to the Court herewith, but for the sake

of brevity, I shall not repeat them in this affidavit.

30. It is my opinion that my husband did not have meaningful communication with his attorney at any time after indictment and prior to conviction and that there was a complete failure of the representation which I think any person charged with serious crime should be entitled under our laws.

Sworn to before me this
1st day of Dec., 1976

Barbara A. Pedersen
Notary Public

BARBARA A. PEDERSEN
NOTARY PUBLIC, State of New York
No. 52-4506776 Suffolk County
Commission Expires March 30, 19 7

Eileen F. Graber
EILEEN GRABER

Sir: Take notice of an

of which the within is a copy, duly granted in the within entitled action, on the day of , 19 , and duly entered in the office of the Clerk of the County of on the day of

Dated, , 19

Yours, &c.,

RICHARD C. CAHN
CAHN AND CAHN
Attorneys for

Office and Post Office Address
196 E. Main St., P.O. Box 680
HUNTINGTON, NEW YORK

To , Esq.

Attorney for

Sir:—

Please take notice that the within

will be presented for settlement and signature herein to the Hon.
one of the Judges of the within named Court, at in the on the day of , 19 , at M.

Dated, , 19 .

Yours, &c.,

RICHARD C. CAHN
CAHN AND CAHN
Attorneys for

Office and Post Office Address
196 E. Main St., P.O. Box 680
HUNTINGTON, NEW YORK

To , Esq.

Attorney for

~~Index No.~~ 76 CR 166 ~~of year 19~~

UNITED STATES DISTRICT COURT
EASTERN DISTRICT OF NEW YORK

UNITED STATES OF AMERICA,

- against -

RAYMOND GRABER,

Defendant.

NOTICE OF MOTION &
AFFIDAVITS

RICHARD C. CAHN
CAHN AND CAHN
Attorneys for Defendant
Office and Post Office Address
196 E. Main St., P.O. Box 680
HUNTINGTON, NEW YORK
(Phone: HAmilton 7-3050)

To HON. DAVID TRAGER , Esq.
United States Attorney
~~Attorneys~~ for

Due and timely service of a copy of the within is hereby admitted.

Dated, , 19 .

Attorney for

[Tr. p. 45 (12/10/76)]

EXCERPT FROM GOVERNMENT'S ARGUMENT ON MOTION FOR NEW TRIAL AND DECISION ON MOTION FOR NEW TRIAL DATED DECEMBER 10,1976 (pp. 472a-482a)

Having failed on that level he now seeks from this Court an opportunity to advance yet another defense, albeit a proposed o[illegible], if I might submit, that all fifteen witnesses, employees, with no discernable motive to fabricate, were somehow lying. He chose not to advance that defense in his original trial. And I submit, wisely so. And I submit as a result of his counsel with Mr. Sutter, I do not -- as I said before, I cannot attempt to discern or evaluate what impact, if any, the comments of Mr. Sutter -- perhaps unfortunately, perhaps inexcusable, had upon your Honor, although I do fail to see any particular comment that really was geared to Mr. Graber's credibility.

* * *

[Tr. pp. 57 - 66 (12/10/76)]

THE COURT: Well, I think it was wise and good to have made the motion and to have made it in this

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detail in which it has been made because I think that the questions raised are real and substantial, notwithstanding that I do think that a -- first, that a hearing is unnecessary because the issues of fact are not -- are not very real; and second, because I think that the papers on their face make out a total case which fails to meet the required standard.

Now, I quite agree with you that the mockery of justice standard of presentation is a standard -- the days of which are numbered even in our Circuit, though they are still given a certain amount of lip service. The standard used in the 6th and 9th Circuit seem to be a good deal healthier. I am not sure that the standards used in the District of Columbia or the Court of Appeals will ever be adopted. That would seem to require that in every case the Government proved its case twice, which is a little too much.

I think my first reaction to the situation between Mr. Sutter and Mr. Graber was, of course, produced -- formed and colored by what I heard from Mr. Sutter and Mr. Caden and by -- Mr. Caden's contributions, of course, came to him from Mr. Sutter because he was not directly in touch with Mr. Graber during these times. I think, however, that from the time when Mr. Graber was arrested and brought into Court,

11

I had a total suspension of judgment of who was telling the truth as between Mr. Sutter and Mr. Graber. And so by calculating and as a matter of long practice, as you can well imagine, you are not a Judge very long before you find lawyers on opposing sides of the case presenting to you diametrically opposed views of what passed between counsel. I am sure you are both familiar with that. And you learn as a Judge that when you have those direct conflicts between people who have ongoing responsibilities to the case before you, you just don't resolve them. You can't. Because you can't resolve an issue of credibility against one of the two lawyers in the case because they are both going to continue in the case. At this point you just sort of have a failure of proof on both sides.

Now, I think that what impresses me about Mr. Graber was that his command of his own mind, his own recollection, even in the -- to him, the specifically harrowing experiences of September 1, the late afternoon when he had been -- I think he felt truly put upon, that he had really been victimized by some ghastly mistake, and on the following morning he did present substantially everything that has been presented here except your criticism of what was said at the side bar.

Now, I do realize that Mr. Graber did not come up to the side bar. My own practice is never to exclude clients from side bars if they want to comeup. Ordinarily they come to the first one or two and not thereafter. They find them, as they usually are, rather dry discussions. There was no exclusion of Mr. Graber from the side bar discussions in the remotest respect. I agree, those points, those things would not have been said if there was Mr. Graber's presence at the side bar. But I can only say that the only way that anyone can ever attempt an evaluation of the effectof such things is by reference to what he did before his attention was drawn to them with particularity as you have in your motion papers today. There is the balance of the conduct of the trial and the memorandum and decision. And on those I have to rest I think. I can't say anything. I do not think they disclosed any animus against Mr. Graber.

Now, I don't much care for Mr. Sutter's style as a lawyer. And I am sure many do not. Now, that is not any subtraction from his eminence, but it's a question of style of practice and his -- which I do not like, and I should say it is fairly common among busy lawyers at the criminal Bar.

I thought that two things were being done with

respect to the defense of this case. One was to make sharp and clear the legal point first. And it was a twofold legal point. First, that the answers that Mr. Graber gave were not solid answers before the Grand Jury and could not as a matterof law be the foundation of a perjury indictment. Second, that as a -- the transcript shows he was distraught. He is a man of a certain quality of nervous disability which doesn't impair his usefulness as a worker or anything else, but perculiarly unfits him either to be a Grand Jury witness or a trial court defendant. And that appeared, to some extent, from the transcript of the Grand Jury proceedings and in all depths at the trial, at every occasion counsel pressed on the attention of the Court the man's mental frailty -- not a disabling frailty, but one peculiarly unfitting him to stand the rigors of testifying in Court, testifying before th e Grand Jury. So that by the time Mr. Graber took the witness stand, I was supposed to take from his testimony what was good and discount to nervousness what was bad. That was a -- the calculated part of this able lawyer's method of representing the defendant, that the seemingly derogatory remarks were attempted to doctrinate me to believe -- and I think that is reflected in these memoranda -- believe that he

was not equal to these legal cases.

Now, Ido not think that it was a happy relationship of representation. It is perfectly plain to me that Mr. Graber was acutely unhappy with it. And it was perfectly plain to me that Mr. Sutter was in one half of his mind unable to understand Mr. Graber's inability to appreciate the method of representation of Mr. Sutter that Mr. Sutter was using, and with the other side of his mind the determination to see to it that he had his way; that he managed the litigation for one simple reason, that he thought he knew more about managing litigation than Mr. Graber did. And perhaps he does. And we have to look at the witnesses who are -- as the testimony described, only an outline because as to some the affidavit says that they are not being stated in full. They rather relate to something which Mr. Sutter put into the record only as a background and by insinuation. And that is to -- which is what you might call the underlying charge such as the one to which Mr. Cosenza pleaded. It was far more relevant to that. And Mr. Sutter did not during the trial omit any opportunity -- and I think that, too, is reflected in the memorandum and makes it clear that Mr. Sutter wherever he could -- and many of the witnesses were still -- well, I don't want

to use the words, "many" -- witnesses were used to put into the record the idea that Mr. Graber had never threatened anybody, had never been forcible, had never in effect said, pay up or you're out of a job, or you won't get a promotion, or this, that or the next thing. That was brought out wherever he could. And wherever there is an opportunity to impeach the witness' testimony in a general way by showing a motive of some sort to testify against Mr. Graber, that was done.

And I think that within the four corners of the kind of trial that Mr. Sutter was determined to conduct and did conduct, he represented Mr. Graber very effectively.

Now, so far as the waiver of jury trial is concerned, I was somehwat surprised of Mr. Graber's continued willingness to waive the jury trial and more surprised that he didn't say, but before another Judge. I think the judgment was right because I think he has a lot of confidence that in his ability to persuade -- and I think he had persuaded me on September 1st and September 2nd to a sympathethic view of him as a man.

Interestingly, if you read the pre-sentence report, you will see what I mean. That's true. I mean he's fundamentally a sympathetic man. And you don't have to do any more than rush across the letters

which have been sent in in support in connection with the pre-sentence proceedings to get some idea of the personal feeling that he is able to induce -- and I think with me.

(Continued next page)

jb/ss

T5

THE COURT: (Continuing) Now, I do not think that he was ineffectively represented. I think that he kept believing throughout that it would have been better to call a lot of witnesses who would have, in effect, tried to change the atmosphere that arose out of the Government calling the selected witnesses that it did. Because it was no secret to me that out of, I think, literally, hundreds who had been interviewed -- and many more who had been interviewed in Mr. Graber's department than were called as witnesses, that the Government didn't have as many witnesses as there were people in Mr. Graber's department. Perfectly plain. But that, you see, would have been highly relevant to a different case. The case before me was this very much narrower case and one in which I think the principal objects of the trial had to be -- first, to see that the witnesses didn't overspeak, to get out of them what background support of decency and decorum could be obtained, to impeach credibility for what it was worth where it could be done, and most important, to -- if he was up to it -- and he was -- have Mr. Graber testify as to the circumstances of the Grand Jury testimony, his own background kind of person he was and his personal feelings with respect

to what went on in the Grand Jury room.

Now, that made a rational trial plan. I felt that the jury having been waived my responsibility was to treat the evidence fully and the bases of my decision fully.

Do you have a time problem?

MR. CAHN: No. It is all right.

THE COURT: So that if I was wrong in this case, an appeal wouldn't be a problem, but the dice wouldn't be loaded against the man and that every legal aspect of the case that I could visualize was exposed in the opinion, was the way I had resolved it made clear, so that in the event of an appeal, if I am dead wrong, there won't be any problem in reversing me. There never is. And it is in that context that I say that I do think it was wise to have made this motion because I do think that in the way in which you have presented it here and in your papers it does fit into the decision that I rendered, so that if there are defects in the -- with respect to those raised by Mr.Graber's motion, they can be immediately related to the decision in the case.

Now, however, I do not think that a case that had been made out for inadequate representation

-- I think that the main reason for thinking that is that the issue was solved, was so clearly and fully and in detail raised in advance of the trial, at the commencement or the trial, when the Government rested, and that each of those times a judgment was made, which I can't criticize from a legalistic point of view, although I am not really in any way in a position to do that, but which does not seem to me to be in any extent inadequate representation. I think that -- I don't know. I can't guess how other lawyers would have handled them. All I can guess is having been handled the way it was, it has been ---it has created this ripe opportunity for post-trial relief that may make the difference. I don't know. I don't think so. I think it should not. And for that reason I do deny the motion.

MR. CAHN: Thank you very much, your Honor. I respectfully except to your Honor's decision on the motion.

* * *

United States District Court

DEFENDANT: RAYMOND CRABB

DOCKET NO.: 76 CR 166

PROBATION/COMMITMENT ORDER

COUNSEL

In the presence of the attorney for the government the defendant appeared in person on this date: MONTH DAY YEAR DECEMBER 10, 1976

[ ] WITHOUT COUNSEL However the court advised defendant of right to counsel and asked whether defendant desired to have counsel appointed by the court and the defendant thereupon waived assistance of counsel.

[X] WITH COUNSEL RICHARD CAHN, ESQ (Name of counsel)

PLEA

[ ] GUILTY, and the court being satisfied that there is a factual basis for the plea. [ ] NOLO CONTENDERE. [ ] NOT GUILTY

FINDING & JUDGMENT

There being a finding/verdict of [ ] NOT GUILTY. Defendant is discharged [X] GUILTY, as charged.

Defendant has been convicted as charged of the offense(s) of violating T-18,USC Sec. 1623, in that on or about July 11, 1975, in the Eastern District of New York, the defendant, having taken an oath that he would testify truly before a duly empanelled Grand Jury of the United States of America, did willfully and knowingly and contrary to said oath, state material matters which he knew to be false.

SENTENCE OR PROBATION ORDER

The court asked whether defendant had anything to say why judgment should not be pronounced. Because no sufficient cause to the contrary was shown, or appeared to the court, the court adjudged the defendant guilty as charged and convicted and ordered that: The defendant is hereby committed to the custody of the Attorney General or his authorized representative for imprisonment for a period of

Imposition of sentence of imprisonment is suspended and the defendant is placed on probation for three (3) years and fined one thousand dollars ($1,000.00).

Execution of the sentence is stayed pending appeal.

SPECIAL CONDITIONS OF PROBATION

FILED IN CLERK'S OFFICE U.S. DISTRICT COURT E.D. N.Y. ★ DEC 13 1976 ★ TIME A.M. P.M.

ADDITIONAL CONDITIONS OF PROBATION

In addition to the special conditions of probation imposed above, it is hereby ordered that the general conditions of probation set out on the reverse side of this judgment be imposed. The Court may change the conditions of probation, reduce or extend the period of probation, and at any time during the probation period or within a maximum probation period of five years permitted by law, may issue a warrant and revoke probation for a violation occurring during the probation period.

COMMITMENT RECOMMENDATION

(The court orders commitment to the custody of the Attorney General and recommends,

It is ordered that the Clerk deliver a certified copy of this judgment and commitment to the U.S. Marshal or other qualified officer.

SIGNED BY [ ] U.S. District Judge [ ] U.S. Magistrate

John R. Bartels, Jr. Date 12/13/76

BEST COPY AVAILABLE

COURT EXHIBIT 1 - MEMO FROM DR. STEFANO DATED SEPTEMBER 2, 1976

TELEPHONE 51 1-1130 BNDD # AS

ROBERT T. STEFANO, M.D., P.C.
DIPLOMATE, AMERICAN BOARD OF INTERNAL MEDICINE

230 HILTON AVENUE HEMPSTEAD, N. Y. 11550

NAME Raymond Graber AGE

ADDRESS DATE 9/2/76

R:

To Judge Dooling

I have examined & spoken to
the above patient today in E.R.
of Mercy Hospital.
In my opinion he is at
a point of nervous exhaustion
due his arrest etc
I feel that he should be home
in bed & medication until 9/7/76

Robert T. Stefano

COURT EXHIBIT 2 - LETTER OF DR. STEFANO DATED AUGUST 20, 1976
(pp. 485a-486a)

ROBERT T. STEFANO, M.D., P.C.
DIPLOMATE, AMERICAN BOARD OF INTERNAL MEDICINE
230 HILTON AVENUE
HEMPSTEAD, NEW YORK 11550

AREA CODE 516
TELEPHONE 481-1130

August 20th, 1976

TO WHOM IT MAY CONCERN:

Re: Raymond Graber
382 Roosevelt Boulevard
West Hempstead, New York 11552

Gentlemen:

The above 56 year old, white, married administrator has been a patient of mine since December of 1969. He had previously been diagnosed, by another physician, has having Diabetes Mellitus six months earlier, and has been under my care for that condition. Additionally, he has a chronic anxiety problem and has many manifestations of this condition. He served with the United States Armed Forces in the European Theatre of Operation during World War II and was discharged with a diagnosis of Psychoneurosis Disorder and has been receiving a medical compensation for this service incurred disability from the Federal Government. Mr. Graber's anxiety problem is intensified by any stressful situation and is manifested by digestive complaints and weight loss. During his present period of stress related to his current indictment he has dropped his weight from his usual 123 pounds to 115 pounds, as of August 17th, 1976.

In addition to the above mentioned chronic problems, Mr. Graber is presently scheduled to undergo dental surgery for extraction of several infected teeth and the prospects of this surgery have caused him nosmall degree of worry and distress.

At the time of my most recent examination, August 17th, 1976, I found Mr. Graber to generally be in an exhausted condition, marked anxious, and found that he was having difficulty concentrating on what he was doing and saying. He states that when he is under such tension his memory tends to fail him and certain phobias he has, such as riding

in cars or public conveyances on crowded public thoroughfares is greatly intensified. Because of this latter problem, Mr. Graber has great fear of having to travel into New York City, where his trial is scheduled to be held and he is most desirous of it being re-located in nearby Nassau County.

It is my opinion that Mr. Graber is in need of a vacation and rest, at this time, which would naturally necessitate postponing his trial, according to the dates he has given me. It is my medical opinion that this request is both indicated and justifiable on medical grounds, and in the long run will be beneficial both to the defendant and the plaintiffs involved in this case.

It is also my opinion that to proceed with the trial at this time may very well prove to be aggravating to both Mr. Graber's diabetic condition and his chronic anxiety.

Very truly yours,

Robert T. Stefano

Robert T. Stefano, M.D., P.C.

RTS:fm

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GRAND JURY TESTIMONY OF DEFENDANT (GOVERNMENT'S EXHIBIT 1)
(pp. 487a-504a)

UNITED STATES DISTRICT COURT

EASTERN DISTRICT OF NEW YORK

- - - - - - - - - - - - - - - - - - - X

UNITED STATES OF AMERICA

-against-

Criminal Folder No:

"JOHN DOE #3"

- - - - - - - - - - - - - - - - - - - X

225 Cadman Plaza East
Brooklyn, New York

July 11, 1975

11:15 A.M.

GRAND JURY MINUTES

Presented by:
JAMES O. DRUKER
Assistant United States Attorney

Reported by:
IRENE B. BEVILACQUA

Witness:

Raymond Graber

R A Y M O N D W. G R A B E R, residing at 382 Roosevelt Boulevard, West Hempstead, after being duly sworn by the Foreman of the Grand Jury, assumed his seat as a witness and testified as follows:

EXAMINATION BY

MR. DRUKER:

Q Sir, you are presently employed by the Town of Hempstead, are you not?

A I am, sir.

Q And in what capacity and for how long?

A I am Deputy Commissioner of the Department of Conservation and Waterways. I have served in that capacity for almost two years. Prior to that I joined the Town in late September 1966 as a civil servant with the initial title of Administrative Assistant.

Q Now, sir, I'll advise you as you probably already know. The grand jury is looking into allegations that Town of Hempstead employees have been coerced into giving portions of their salaries each year to the Republican Party. In that regard, there's been a fair amount of testimony as to your own participation in the so-called "one percent scheme" or "one percent plan", and I am obliged to advise you that:

Number one, you have a right to refuse to answer

any questions, the answers to which might tend to incriminate you;

Number two, that anything you do say may be used against you in a court of law at a later time;

Three, that you have a right to have the attorney of your choosing outside the grand jury room and that you can consult with him at any time simply by asking the Foreman;

Fourthly, that if you can't afford such counsel, the court will provide one for you.

Do you understand that?

A Yes. Can I ask this?

Q Surely.

A Is this a routine statement made?

Q No. In all candor, I'm making this statement to you in that I want you to understand that if it's determined that there have been violations of the federal criminal statutes, you may fit into the category as a defendant rather than a witness in that there has been testimony that you have participated in the one percent thing as it is called; that you have actively solicited employees possibly pressured them and indeed, given them cards of some sort with one percent figures on them. Now, I'm not saying and it hasn't yet been determined whether or not this isn't in fact a crime. But I think you should know this--

A Well, no. Whether or not as you stated as anywhere near the truth. Right. May I ask this? Very frankly, never having been before a Grand Jury and reading what you do in the newspapers these days, it's sort of scary. When you see a guy like John Connally for example, who as I followed, I always felt this man was, you know, perfectly what would be innocent, I guess is the word. And so, when I received a second telephone call from Walt Disler of the Federal Bureau, I felt that I wished to have some insight into these hearings and I had read that Town employees could ask questions of a lawyer. And so I made a telephone call to Republican Headquarters. I confirmed that this was so and a gentleman named Jim Catterson was available. I said, "Fine. I'd like to speak to him just to get some insight." I said, "I don't believe I need anybody, you know, to come down to Brooklyn with me or on my behalf." However, in view of what you've just said, is it proper for Mr. Catterson to be in here with me or--I mean you're putting it in a pretty grim light.

Q The law doesn't allow attorneys to enter the Grand Jury room, but at any point during the questioning, a witness can simply by requesting it, go outside and talk to counsel in privacy.

A I don't think there will be any need for that but I--what you just said is sort of scary.

Q Mr. Catterson is out here.

A Yes.

Q So if you want to discuss this with him now, or at any other time--

A I don't think so. I really don't.

Q Being aware of all of this then, is it your desire to waive these constitutional rights and to testify before the Grand Jury?

A I certainly will testify.

Q Have I or has anyone else made either a threat or promise to you in order--

A Neither, neither, no.

Q All right. Now, I'll ask first of all, if there came a time after or before you went with the Town of Hempstead when you heard anything to the effect that Town employees are expected to give one percent of their salaries to the Republican Party each year?

A No, other than in the newspapers for many years. I might almost say, decades, decades. I have read about both Parties, party faithful contributing, most specifically to the issue we're directed today. Through the years, the various officials of the Party have openly admitted; it's appeared in newspapers through the years, that many--well, in our case since I think you can encompass more in the Town of Hempstead

that many of the Town of Hempstead employees contribute and a figure is made in many cases about one percent. I do know that in 1963 the then County Executive had a commissioner of accounts who made what I read recently was a very thorough investigation. And while he disapproved of the concept of civil servants contributing, that he found that what was done was voluntary and so forth--

Q All right. Mr. Graber, back to the question.

A Okay.

Q Did you hear anything to the effect that Town of Hempstead employees are expected to give one percent?

A No. All I know is what I read in the paper. Specifically, nobody ever told me at any point that I must give one percent.

Q All right. Did you lend any credence to what you read in the papers?

A In what regard, sir?

Q As far as their being a one percent guideline in existence?

A No. No. Do you mean in the sense it's mandatory? No.

Q Let me ask you this, sir. All right. In 1974, I see that your salary according to our records was $20,159 and your contribution to the Republican Party around election

was $202. How did you arrive at that figure, sir?

A What was my salary?

Q According to the computer printouts for the Town of Hempstead, $20,159?

A Twenty--in what year?

Q 1974.

A $20,000, right.

Q $159.

A And my contribution was $202.

Q Right. How did you arrive at the $202 figure?

A Okay. I would pinpoint it this way. As I previously stated, I joined the Town of Hempstead in late September of 1966. At that time, my department was in its inception. It was just a nucleous being formed. It was a new and imaginative, way ahead of its time concept in environmental protection.

Q All right. Mr. Graber, let me just interrupt at this point.

A Yeah.

Q As you can see, I'm obliging you at your request here, as you can see. There's a hallway full of people out there that we are trying to get out of here by lunchtime. And if we can stick to the question, we'll be alot better off.

A I'll try--I--

Q You sat down in 1974 and you made out a check for $202.

A Right. Good. You asked me--

Q How did you arrive at this figure?

A Perhaps I've been too wordy but I tried to explain it. In any event in mid-October at that time having small office, you know, just several people, I heard Yolanda Rider Speranza (phonetic), Carl Lebek--

Q L-E-B-E-K?

A Yes. Thomas Laurencelle--

Q How do you spell that?

A L-A-U-R-E-N-C-E-L-L-E. Thomas Laurencelle. And Gino Aiello, A-I-E-L-L-O. They were all sitting around in a bull session discussing the fact that they received, I believe a campaign finance letter and that they were all going to contribute one percent. One of the four, I do not recall which of the four, said to me, "You ought to contribute one percent too."

Q What year was this?

A This was 1966. Okay? This incidentally was not a threat. I can assure you that all four of these people were just ordinary employees. I said, "Well, I certainly couldn't do that. I've been unemployed for one year." I was really flat on my back.

Q All right. Would the long and the short--

A But--but in any event, that year I made a token contribution, a small amount. Whatever it was, I do not remember. And in ensuing years, I made a one percent contribution just like everybody else.

Q All right. Now, did you play any role within your department in actively soliciting these contributions from employees under you at any time?

A Okay. I don't want to be hairy about it. For example, Walt Disler (phonetic) asked me a question and we had a little misreading although I tried to qualify it. In 1966 when I made my contribution, everybody gave their contributions to the then Director, now Commissioner, Udell. Okay?

Q U-D-E-L-L?

A That is correct. The following year Commissioner Udell, his current title, said to me, "Ray, I'm pretty well tied up. As you know I am also teaching at Suffolk Community College. I would like you to transmit - this is the point I am making - transmit campaign contributions." And people--then some of them did give them to him and he gave them to me and as I understand it, we did have a few facilities in the hinterland. You will find that in August or September in all of these various facilities, people will say,"Is now the time

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to contribute?" So he advised them, give it to me. All right? Each and every ensuing year, I was the transmitter. Incidentally, mine is the office where everybody comes,"Will you mail my telephone bill? Will you help me with my income tax?" It's an open office. I have no secret door or anything like that. The girls sit there, my accounting assistant and so forth. Now, I'll break down and get direct to it. I would never be so presumptuous just as I have at times in my community rang doorbells, I would never be so presumptuous in the community even if I knew a man was--to say, "You ought to give five dollars or ten dollars." Neither would I be so presumptuous to say to anybody that, "You should give one percent." Additionally, as one example,and I can give you many, sir, when my own secretary came, just as I heard a bull session, finance letters were received shortly after she joined us and she said, "Mr. Graber, what is everybody talking about? What is one percent?" And I said, "Vicky, you have to get that information from somebody else." In other words, feeling in my position, that I should not be the originator of such a thing.

Q All right. Let me ask you this now.

A Incidentally, I do not wish to commit perjury. There is a little more to that.

Q All right. Hold on.

A I don't want to commit perjury.

Q A number of employees have testified that you would come around and give them a three-by-five or a similar card on which it would have their name, their salary, and a handwritten notation somewhere on the card which was a figure representing one percent of their salary. Now, first of all, has that occurred?

A No, not in the manner and the way that you said it.

Q All right. Would you relate your recollection?

A We're talking about 1966, you know, since this is only '75 through '74. I have previously stated that comes August or September and 95% to 98% of the department I am with, employees are in hinterland buildings scattered all over I rarely see them. I have no direct communication with them. I have never solicited them. Okay? But as August and September come around, individuals and supervisors start calling up or coming in and believe it or not, sir, many of them although they know if they've had overtime and their check is not correct, do not know their annual salary. If somebody asks for their annual salary, they will get it.

Q All right. And then you write it down?

A If somebody will ask either in person or by phone, "Will you figure out one percent for me?", he has to take the initiative or in some cases it is his supervisor who will

come in and say, "John, Bill and Joe all want to know what they make," or "John and Bill want to know what they make and Joe wants to know what one percent is." I will have one of the girls write it out for them. Okay?

Q And then do you give it to them?

A I have given it to individuals and in some cases to their supervisor when they took the initiative and asked me for it.

Q And roughly how many of these would you say you give out per year?

A A substantial number.

Sometimes--I have sometimes I've said, "See the girls." The point I am making is that this is asked. May I add this? I already--

Q All right. I think you've made that point that it's--

A All right. Now, on the solicitation--

Q All right. Wait, wait.

A Yes.

Q I first want to ask--

A Yes.

Q --for example, last year how many of these cards did you prepare?

A I don't know. I believe I told the receptionist to

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prepare them. By this time, I'm too busy. I wish, you know--

Q How many employees are there in your department?

A Approximately one hundred and ten.

Q Would you say that it would be roughly a hundred cards that would be prepared?

A I'm not certain of the number. I do recall one thing though, and you have to understand Dorothy Hederick (Phonetic), our receptionist. This is a girl who would love to be a Clerk-Steno II or Clerk-Steno III. She can't cut the mustard. We all tried giving her letters, but she's an excellent telephone answerer and receptionist. And so she was brooding she had nothing to do. I said, "Dorothy. Here's the attendance book. We're getting so many of these calls. Get them ready. Give them to anybody who wants them." I gave some out too incidentally. "Put the man's name and his salary, and if they need that information, they can get it."

Q All right. So then she prepared it for everyone in--

A Now, she went one step further--

Q Please, please. Let me interrupt. The reporter can only get one of us at a time, so--

A Okay, okay. All right.

Q So from the standpoint of what you've just said, she would prepare the card for everyone in the department and

then hold them so that they would be available if the individual requested it.

A Yes. But by somewhere along the way, we have received so many phone calls or so many requests, that I did give some to some supervisors with these instructions, so help me God! "You have this. You've been asking for it for some. There's gonna be more. I'm too busy preparing a budget. They are only to be given to a man if he asks you a question which specifically can be answered by you." And there was no one percent figure on those cards.

Q All right, now. When these people you mentioned before would call up and ask you to calculate the one percent, what did you think they were interested in knowing one percent for?

A Obviously, I knew that they wished to contribute.

Q All right. So it wasn't all just what you read in the newspapers. We've got number one--

A You know, I mean--I thought you meant how I--I think you asked me my $202--how I--

Q You said Gino Aiello and other people talking about it and that was ten years ago or more--

A Right.

Q You've got your employees asking you for a one

percent figure of their salaries, so it was a little more than what you read in the newspapers. You saw it; you heard it.

A No. What I meant by reading in the newspapers is what I'm reading about this investigation - extortion, compulsion, et cetera,et cetera.

Q Well, this investigation started roughly September, 1974. By your testimony--

A I wasn't aware of--

Q --well, I wasn't even in the United States Attorney's Office before then. By your testimony, you've known about the one percent thing for ten to twelve years anyway.

A As far as people voluntarily to the best of my knowledge contributing, apropos voluntary, and there are many cases like this in my department where a woman, in this case Dorothy Hederick, (phonetic) as long as we were talking about her. "Mr. Graber, I often contribute", or perhaps she said, "I often contribute one percent. This year my daughter got married. I can't contribute it. Is it all right? You know, will something happen to me?"

"Dorothy, if you do not wish or can't afford to make a contribution, that is your free choice. You have nothing to fear." And those were my exact words to Dorothy.

Q Now, if people testified that they didn't want to contribute; they didn't ask for their figures; you came around and gave them the cards, would they be either mistaken or not telling the truth in their testimony?

A I would hate to believe that anybody is not telling the truth. I can, from one little incident that occurred recently, realize that people remember sequences differently or did their supervisor give them something? Okay?

Q Now, did you bring with you your cancelled checks and receipts?

A What I can recoup. Naturally, I primarily have the most recent years because, you know--

MR. DRUKER: For the record, I'll ask that this group of approximately five receipts and three cancelled checks be marked as Grand Jury Exhibit 172.

THE WITNESS: Sir, if the income tax man ever calls me down on my, you know, current last year's tax, what do I tell them?

MR. DRUKER: When the I.R.S. gets to you, we'll make these available.

THE WITNESS: Okay.

MR. DRUKER: I should say "if" rather then "when".

(Whereupon the aforesaid documents were marked

as Grand Jury Exhibit 172 by the reporter as of this date).

MR. DRUKER: If no one has any questions, I'll ask that Mr. Graber be excused. Thank you for appearing, sir.

THE FOREMAN: You are excused.

(WHEREUPON, the witness was excused and withdrew)

Time noted: 11:35 A.M.

* * *

GRAND JURY EXHIBITS

Page	Description	Exh. #
-16	five receipts three cancelled checks	172

NOTICE OF APPEAL (FILED DECEMBER 16, 1976)

UNITED STATES DISTRICT COURT
EASTERN DISTRICT OF NEW YORK
- X

UNITED STATES OF AMERICA

- against -

RAYMOND GRABER,

Defendant.

- X

76 CR 166

NOTICE OF APPEAL

SIR:

PLEASE TAKE NOTICE that the defendant hereby appeals to the United States Court of Appeals for the Second Circuit from a judgment of conviction imposed December 10, 1976 by the United States District Court for the Eastern District of New York, Dooling, J., and from the denial on the same date of a post-trial motion (1) to set aside the verdict, (2) for a new trial, (3) for an order vacating a jury waiver and (4) disqualifying the Hon. John F. Dooling, Jr. from further proceedings.

Dated, Huntington, New York
December 13th, 1976

Yours, etc.,

RICHARD C. CAHN
CAHN AND CAHN
Attorneys for Defendant
Office and P.O. Address
196 East Main Street
P.O. Box 680
Huntington, New York 11743
(516) 427-3050

TO: HON. LEWIS ORGEL
Clerk of the United States
District Court for the
Eastern District of New York
U.S. Courthouse
225 Cadman Plaza East
Brooklyn, New York

A 202 Affidavit of Personal Service of Papers

LUTZ APPELLATE PRINTERS, INC.

FEDERAL COURT
SECOND CIRCUIT

UNITED STATES OF AMERICA,

- against -

RAYMOND GRABER,
Defendant-Appellant.

Index No.

Affidavit of Personal Service

STATE OF NEW YORK, COUNTY OF *ss.:*

I, Victor Ortega, *being duly sworn, depose and say that deponent is not a party to the action, is over 18 years of age and resides at* 1027 Avenue St. John, Bronx, New York.

That on the **10th** *day of* **Feb.** *19***77** *at* **225 Cadman Plaza Brooklyn, N.Y.**

deponent served the annexed **Appendix** *upon* **David Trager-US Atty. East. Dist.**

the *in this action by delivering a true copy thereof to said individual personally. Deponent knew the person so served to be the person mentioned and described in said papers as the* *herein,*

Sworn to before me, this **10th** *day of* **February,** *19***77**

Victor Ortega

Victor Ortega

ROBERT T. BRUN
NOTARY PUBLIC, State of New York
No. 31-0418950
Qualified in New York County
Commission Expires March 30, 1977